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THE LORD ADVOCATES OF  
SCOTLAND



# THE LORD ADVOCATES OF SCOTLAND

Second Series

1834—1880

*George William*  
By  
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Author of "The Lord Advocates of Scotland from the  
close of the Fifteenth Century to the passing  
of the Reform Bill"

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## PREFACE

THE term "Advocate" is of ancient use in Scotland ; and in the reign of Alexander the Third the right of advocates to plead at the bar was secured by statute. There is no trace of a King's Advocate at that time. But as private persons employed advocates to represent them, it was natural that the King should do the same, and the transition from occasional employment by the Crown to the position of a recognised officer of the law was easy. The lawyer who was so employed soon became known as the "Kingis Aduocat". The idea of having such an officer may have been borrowed from abroad. The long series of alliances between France and Scotland imported many French ideas into the Scottish Courts ; and the King's Advocate may have been intended to take the place of the Procureur du Roi.

Whatever may have been the origin of the office, whether it was of French derivation or of native growth, the first authentic traces of its history are found towards the close of the fifteenth century. During the sixteenth century the office gradually rose in importance. The King's Advocate became Public Prosecutor, and a great Officer of State. The title "Lord" was common to all members of the Scottish Government. The Treasurer was the "Lord

Treasurer," and the Secretary of State was the "Lord Secretary." The King's Advocate became known as the Lord Advocate, and has borne that title since about the year 1600.

In the reign of Charles the First the right of appointing the Lord Advocate was taken from the King and given to the Parliament. Under the Commonwealth the King's Advocate became "Advocate to the Lord Protector." At the Restoration the right of appointment was, by an Act of the Estates, restored to the Crown. The Revolution, the Union, and the abolition of the Scottish Privy Council, each affected the functions and powers of the Lord Advocate. In the eighteenth century the office of Secretary of State for Scotland was abolished, and the management of Scottish affairs passed into the hands of the Ministers in London, who acted under the advice of the Lord Advocate, by whom, as time went on, more and more influence in political affairs was acquired. In the year 1775 the entire patronage of Scotland was handed over to Henry Dundas, then Lord Advocate, who ruled Scotland, in various offices, till 1811. After that Lord Advocates, Scottish Lords of the Treasury, and various confidential advisers of Government, shared the management of Scotland; but the Lord Advocate was always the most prominent and powerful of these officials. His influence was such that it was stated, just before the Reform Act of 1832, that "the Lord Advocate of Scotland has an authority almost unlimited, and greater than that of any functionary in the British Empire."

In 1883 two volumes were published with the title:—"The Lord Advocates of Scotland from the close of the

Fifteenth Century to the Passing of the Reform Bill." The aim of that work was not to give a series of complete "Lives," but to trace the history of an office the holders of which enjoyed peculiar opportunities of influencing the development of the law in Scotland ; to describe the various arrangements which, since the Union, have been made for the conduct of Scottish affairs ; to record the part the Lord Advocates took in politics and legislation ; and to combine with all this some account of their personal history.

The same plan has been followed in the present volume, which continues the story of the political and legal adventures of the Lord Advocates from the year 1834, when Francis Jeffrey, who had been in office since 1830, went on the bench and was succeeded by John Archibald Murray, down to the Parliament of 1880.

This was a crowded period of Scottish history. Industrial unrest and ruinous strikes ; the disruption of the National Church ; improvement of the Land Laws, and particularly of the Law of Entail ; a Poor Law Act which swept away most of the ancient Scottish system ; the removal of tests from schools and Universities ; important commercial legislation ; the establishment of National Education ; the abolition of patronage in the Church, and the introduction of many reforms into various branches of the law ; fill up these fifty years, during which the burden of Scottish business in Parliament, growing heavier as time went on, lay almost entirely on the shoulders of the Lord Advocates.

Throughout all this period it was felt that some change in the system of Scottish administration was

desirable ; and at last this was brought about, and the responsibility of the Lord Advocates was diminished when, a few years after the general election of 1880, a statute was passed providing for the appointment of a Secretary of State for Scotland (48 & 49 Vict. c. 61).

The appointment of a special Secretary placed the administration of Scottish affairs on a new and sounder footing ; and it closed a long controversy, the history of which, commencing soon after the Reform Act of 1832, is traced in this volume. That history shows, as a Scottish Member once said, when the question was under debate in the House of Commons, that if people had known how much the Lord Advocates were expected to do, they would have wondered that they did so much. “ I must say,” was the verdict of Mr. Disraeli on the same occasion, “ that my experience leads me to the conviction, that of all public offices none have been sustained during the last twenty years with such continuous ability as the office of Lord Advocate of Scotland.”

G. W. T. O.



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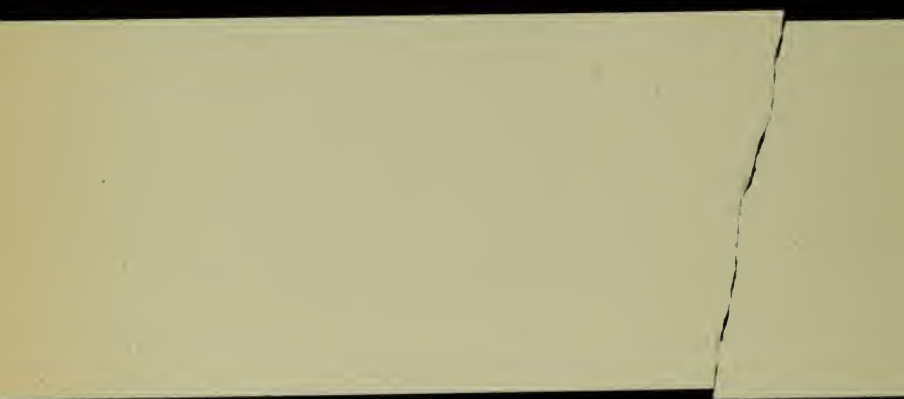
# ERRATA.

p. xxiii, for March 1888 *read* March 1880.

p. xxiv, for 1909 *read* 1910.

p. 299, Note 3, for March 14 *read* March 17.

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## CHAPTER I

### JOHN ARCHIBALD MURRAY

JOHN ARCHIBALD MURRAY, who succeeded Jeffrey as Lord Advocate, came of a well known family. His grandfather was Archibald Murray, the second son of Alexander Murray of Cringletie, who bought a property near Edinburgh, and called it Murrayfield. His father was Sheriff of Peeblesshire, and afterwards Member of Parliament for that county. When Henry Dundas, the first Viscount Melville, became Lord Advocate in 1775, Sheriff Murray succeeded him as Solicitor-General for Scotland; and in 1783 he became a judge of the Court of Session with the title of Lord Henderland, which he took from an estate in Peeblesshire, which had passed from a branch of the Cockburn family to the Duke of Queensberry, who sold it to the Murrays.

Lord Henderland had married Katherine, daughter of Sir Alexander Lindsay of Evelick, in Perthshire, and niece of the first Earl of Mansfield.<sup>1</sup> Of this marriage two sons were born. The elder, William Murray, was educated for the English bar. The younger, John Archibald, born in 1777, was sent to the High School of Edinburgh, of which Dr. Adam, author of the *Roman Antiquities*, was then Rector, to Westminster School, and to the University of Edinburgh.

Young Murray's chief friend at the High School, before he went to Westminster, had been Francis Horner; and their friendship, which remained unbroken till Horner's death in 1817, was continued at the University, where they

<sup>1</sup> Lady Lindsay was a sister of the Lord Chief Justice.

were both members of the "Juvenile Literary Society." This was a debating club, founded in December, 1792, of which Brougham, the future Lord Chancellor, was the first President. By the laws of this club no political discussions were allowed; and it was the same in the famous Speculative Society, which Murray and Horner both joined. Party feuds, inflamed by the passions to which the French Revolution had given birth, were so violent that in 1794 the Society passed a resolution forbidding political debates; and Murray, who, like Brougham, Horner, Lord Henry Petty, and others who sat on the benches of the Society's hall during what is said to have been the most brilliant period of its history, would have liked to discuss the burning questions of the day, had to content himself with such mild topics as "Divine Love" and "Professor Stewart's Essay on Dreaming." It was, however, impossible to exclude politics altogether from the debates of young men most of whom were looking forward to public life; and the Speculative was for a time the scene of a controversy which was caused, according to Cockburn, by the expulsion of Thomas Emmet, who had been for several years a member, because of his connexion with the United Irishmen. "This," Cockburn says, "introduced the whole politics of the day. The agitation brought back the old members, who, headed by Charles Hope<sup>1</sup> and David Hume,<sup>2</sup> of course tried to bear down the younger, who, led by Brougham, Jeffrey, Horner, Lord Henry Petty, and Lord Kinnaid, were as defying in their Whiggism as their opponents in their Toryism." The professors of the University, most of whom suspected every young Whig of "French principles," and the citizens of Edinburgh, took sides in the dispute; and matters went so far that a duel between Jeffrey and Hume was actually talked about.

From the University and these stormy scenes in the

<sup>1</sup> Lord Advocate, 1801-1804; Lord Justice Clerk, 1804-1811; and Lord President, 1811-1841.

<sup>2</sup> Nephew of Hume the historian, and afterwards professor of Scots Law.

Speculative, Murray passed, on the 21st of December, 1799, to the Scottish bar, where Brougham and Horner joined him.<sup>1</sup> The position of the Whigs in the Parliament House seemed hopeless in those days. Jeffrey, who had become an advocate five years before, was in such low water that he thought of leaving Scotland and trying to make a living by his pen in London. For some years it had been dangerous to profess Whig principles. Lord Justice Clerk Braxfield—Stevenson's *Weir of Hermiston*—whose brutal treatment of political offenders made Fox exclaim in the House of Commons "God help the people that have such judges!" died in May, 1799; but the liberty of any man who ventured to speak out against the ruling party was still in peril. Murray, however, took his stand on the Whig side. Perhaps Dr. Adam, whose liberalism was so keen that he talked politics to his pupils, may have influenced him in his boyhood; and the impressions which he received at the High School must have been deepened at the University by the teaching of Professor Dugald Stewart, to whose lectures on Moral Philosophy and Political Economy he had listened in a class-room which has been called the cradle of the *Edinburgh Review*. His affection for Horner, and his friendship with Brougham, led him in the same direction. Cockburn speaks of him as "reared in the very hot-bed of Toryism, but transplanted by his own spirit, and his great friend Horner's attraction, into the more congenial soil where through life he has flourished."

When the *Edinburgh Review* appeared, in 1802, Murray was one of the founders; and from the day on which that "pillar of fire" was lighted, he was deep in the confidence of Jeffrey, Moncreiff,<sup>2</sup> and the older Whigs. When the fate of the *Review* was hanging in the balance Jeffrey said he had "a thousand resources in Murray."<sup>3</sup> He was always

<sup>1</sup> Brougham and Horner were not called to the English bar till 1807. Murray's brother William, who had succeeded to the family estate on the death of Lord Henderland in 1795, also went to the English bar.

<sup>2</sup> James Wellwood Moncreiff, son of the Rev. Sir Henry Moncreiff Wellwood of Tulliebole, afterwards on the bench as Lord Moncreiff.

<sup>3</sup> To Francis Horner, January 5, 1805.

ready to work for the party, and excelled in suggesting schemes for baffling the enemy. At the same time he was so bland and courteous that it was almost impossible for his political foes to pick a serious quarrel with him. He did not, however, always escape their satire. Those were the days of the Beauty Books and the Keepsakes, when people rhymed, and every drawing-room played at capping verses. The Whig and Tory committee rooms were not exactly nests of singing birds ; but party literature often took the form of ballads, and one bard, with a touch of malice, hit him off as :—

“Smooth-tongued M——y, in whose velvet paw,  
Even when he pats and smiles, there lurks the claw.”

He seems to have taken his practice at the bar very easily. Cockburn said he was too fat for hard work, and Jeffrey made fun of the care he took of his health. “By the bye,” he writes to Horner, “Murray has been under terrible apprehensions of gout for the last fortnight. I tell him that his career is at an end, and that he shall dance no more, but ought to make up his mind to flannel and thick ankles for the rest of his life. I do not think he has anything more than a slight rheumatism in his knee ; but he is very anxious and full of precautions.” He had not, like Jeffrey, the stimulus of poverty to make him work. Besides a private competency, he enjoyed a comfortable little place as Clerk of the Pipe, a sinecure office in the Scottish Court of Exchequer, which he shared with his brother after the death of their father, who had also held it. So he had time to think about his health, and was in terror lest good living, with rich sauces made by himself, of which he was all through life excessively fond, should bring on the gout. He helped Jeffrey with advice about the *Review* ; but only five articles have been traced to him. He contributed two to the first number, two to the second, and one to the sixth.<sup>1</sup> After

<sup>1</sup> *Edinburgh Review*, October, 1802, *Bowles' Reflections on the Conclusion of the War ; Bread, or the Poor, a Poem by Mrs. Pratt, Author of Sympathy, Gleanings, etc.* ; January, 1803, *Adolphus' History of England from the*



that he appears to have written nothing ; but though he ceased to use his pen he did much in other ways to spread the ideas which the *Edinburgh Review* was maintaining against the *Quarterly*, which appeared in 1809, and *Blackwood's Magazine*, which began its brilliant career in 1816.

The *Edinburgh*, however, did not reach the masses. There were between thirty and forty newspapers in Scotland, some Whig, some Tory, and some neutral ; and on the 28th of January, 1817, the first number of the *Scotsman* was published. At first its liberalism was so advanced that the Whigs did not support it cordially ; but it was conducted with such spirit and ability that, in the course of a few years, it became the most important paper in the east of Scotland, and, though always remaining independent, was ultimately the leading organ of the Whig party.

The year 1817 began sadly for Murray. He had seen with affectionate interest the fine public career of Francis Horner, with whom he kept up the correspondence which furnished the materials for the *Memoirs* which Horner's brother Leonard afterwards published. Murray kept all Horner's letters, the last of which, sending messages to Jeffrey and other friends in Edinburgh, for news of whom he said he was "hungering," was written on the 16th of December, 1816, from Pisa, where he died in the first week of February, 1817.

At this time the Whigs were hampered in their efforts for the reform of abuses by the political "Associations," which were full of men who not only held extreme opinions, but who also believed that no improvement in the condition of the people could be accomplished except by the use of force. The Liverpool Government heard that

*Accession of George III to the Conclusion of the Peace of 1783 ; Madame Necker's Réflexions sur la Divorce ; January, 1804, The History of the Wars which arose out of the French Revolution, by A. Stephens.* The Editor of the *Edinburgh Review* informs me that these are the only articles known to have been written by Murray ; and that the article on the *Réflexions sur la Divorce* was composed in collaboration with Sydney Smith.

in Glasgow there was an association the members of which took an oath to support the cause of manhood suffrage, and annual parliaments, "either by moral or physical force, as the case may be"; and the reading of this oath in the House of Commons by the Lord Advocate<sup>1</sup> materially helped the Ministers to carry their bill for the suspension of the Habeas Corpus Act in February, 1817.<sup>2</sup> A number of arrests were made in Scotland; and of the trials which followed that of Andrew McKinlay, a Glasgow weaver, on a charge of treason, was the most important, owing to facts which were revealed about the way in which evidence for the prosecution had been obtained.<sup>3</sup> The prisoner was defended by the leaders on the Whig side of the bar, including Murray; and the jury returned a verdict of "Not Proven."

The Whig advocates were always ready to secure a fair trial for even the most violent of the political prisoners; but they had good reason to know that their clients were endangering the cause of reform. For though the Ministers had suspended one of the chief safeguards of the constitution, they had done so by an Act of Parliament; and however arbitrary their conduct might be it was not illegal. The armed rising contemplated by those who took the oath at Glasgow would, therefore, be an act of rebellion which could not fail to alienate many whose sympathies had hitherto been on the side of the reformers. The cause for which the Scottish Whigs were struggling depended on the growth of public opinion in its favour; and they knew that it would be ruined if it once became identified in the eyes of that great middle class which is always, in the long run, on the side of law and order, with rebellion and civil war. "Exhort all lovers of liberty to be lovers of order and tolerance," Jeffrey once wrote to Cockburn.

<sup>1</sup> Alexander Maconochie, Lord Advocate 1816-1819, at that time M.P. for Yarmouth, and afterwards on the bench as Lord Meadowbank.

<sup>2</sup> *Hansard*, xxxv. 729.

<sup>3</sup> *State Trials*, xxviii. 275-628. An account of this affair is given in *The Lord Advocates of Scotland*, etc. (1883), vol. ii. pp. 242-253.



The final collapse of those who relied on the use of arms did not come till the spring of 1820, when a band of agitators in Glasgow, exasperated by poverty and hunger, and by the policy of Ministers who were bent on preventing reforms at all hazards, declared themselves to be a "provisional government," and ordered a general strike throughout the West of Scotland. Owners of public works were told to close them. Men who wished to earn their bread by labour were intimidated, and forced to lay down their tools. Colliers left the pits. Many cotton mills were silent. The streets of Glasgow were full of idle men. Roving bands skulked about the country at night, surrounding houses, and demanding arms; and it was said that fifty thousand men were about to march on Edinburgh. The 5th of April, 1820, was the day fixed for the insurrection; but when, in the early morning, the mob assembled in Glasgow, brandishing the pikes and muskets with which they imagined that the established government of the country could be overthrown, they found five thousand soldiers drawn up in the streets, by whom they were easily dispersed.

In the country district of Bonnymuir, near Stirling, there was a skirmish between a band of armed workmen and a troop of yeomanry, who put them to flight, and took a number of prisoners. This was the "Radical War," for taking part in which twenty-four men were condemned to death. The penalty for taking up arms against the forces of the Crown being death, no other sentence could be pronounced on those who were found guilty; but only three were executed. These were the last executions for treason in Scotland.

Thereafter, except for occasional rioting at election times, the Scottish struggle for reforms was carried on by constitutional methods only. Nothing in the shape of organized violence was again attempted. At the end of the year 1820 there was, almost for the first time, a large political meeting in Edinburgh. A requisition was presented to the Lord Provost requesting him to convene the citizens for the purpose of petitioning the King to dismiss

his Ministers. The Lord Provost refused. It was at that time illegal to hold a public meeting in the open air; and every building over which the town council or the Lord Advocate<sup>1</sup> had control was shut against the Whigs. But the Pantheon, a large place used as a circus, was hired; and there, on the 16th of December, between two and three thousand people met. Moncreiff was in the chair, and on the platform were most of the Whig leaders, who made speeches for which, not many years before, they would have been sent to Botany Bay.

Murray must have been already well known as a leader on the popular side. He is named by the reporter of the meeting as having been "pointedly selected" for applause when the speakers came into the room. He made his first public speech that day, in moving a resolution which condemned the policy of the Ministers towards the smaller nationalities at the close of the war. Their conduct at the Congress of Vienna was, he said, a breach of faith, after which no country would ever trust the promises of Great Britain. Jeffrey spoke with his usual fire,<sup>2</sup> and Cockburn accused the Government of having "manifested at all times an unconstitutional and distempered aversion to all popular rights and privileges." When at last the proceedings, during which no fewer than thirteen resolutions condemning Lord Liverpool and his colleagues were carried, came to an end, and Moncreiff asked the audience to go quietly to their homes, "like people who have been exercising one of their great constitutional rights," the Whigs congratulated themselves on having proved that it was possible to conduct a popular movement by peaceful means, and how powerful to help it the sheer weight of public opinion might become in the future. "The influence of all this," Cockburn says, "can scarcely be overstated. Old Edinburgh was no

<sup>1</sup> Sir William Rae.

<sup>2</sup> "It is much to be regretted that, from the rapidity of Mr. Jeffrey's utterance, it is impossible, by any report, to give an adequate idea of the vivid eloquence that electrified the meeting."—*Report of the General Meeting of the Inhabitants of Edinburgh*, December 16, 1820.

more. A new day dawned on the official seat of Scottish intolerance."

The feeling on the other side was simply blank astonishment. Ridicule was hurled at the Whigs for their audacity ; and Murray came in for a share of this. On the morning of the appointed day the Tories issued a comic playbill, in which the speakers were described as "Those who are desirous of being his Majesty's servants," and were named after characters in *Midsummer Night's Dream*. Murray was Bottom ; and the performance was to conclude with "The Silk Gowns, or Who shall have Them," in which Murray played the clown to Jeffrey's harlequin. In another skit, where Murray appears as Bacchus, he is described as "Mitis, rubicundus, femineus, nitidus, benignus," and as "Plumpy Bacchus with pink eyne." The Whigs hit back with a comic playbill of their own. *The School for Scandal* was to be performed by James Hogg (the "Ettrick Shepherd") as Sir Peter Teazle, Sir Walter Scott as Sir Oliver Surface, John Wilson ("Christopher North") as Joseph Surface, and William Blackwood as Crabtree, "his last appearance on this stage previous to his entering on the management of the Billingsgate Theatre." After the play there was to be a Mohawk dance by John Wilson and John Gibson Lockhart, during which "the scalps of the late Professor Playfair, Mr. Leslie, Mr. Wordsworth, and several others of Mr. Wilson's most intimate and bosom friends, will be exhibited for the amusement of the Public."

Within a few years fresh signs of the coming storm, which was to subvert the old political system in Scotland, began to appear. In April, 1825, there was the public dinner to Brougham, when such toasts were proposed as "The People and their Rights, as established at the Revolution"; "Catholic Emancipation"; "The Immortal Memory of Charles James Fox"; "The healths of the Dukes of Hamilton and Argyll, and the Whigs of Scotland"; and "Parliamentary Reform," in proposing which Mr. Adam Black said that if, a few years before, any man had ventured to speak of such a thing he would have been regarded as "a

desperate visionary, if not as a dangerous demagogue.”<sup>1</sup> Even the Edinburgh town council became restive.<sup>2</sup> After the death of the first Lord Melville his successor in the peerage had succeeded him as Scottish Manager. Their kinsman William Dundas had been Member for Edinburgh during fourteen years when, in the summer of 1826, the family at Arniston were startled by hearing of a plot on the part of a section of the Edinburgh town council to throw off their old allegiance, and elect the Lord Provost, William Trotter, as their Member.<sup>3</sup> This attempt at rebellion was speedily suppressed. Mr. Dundas of Arniston went, with his man of business and Mr. John Hope, the Solicitor-General for Scotland, to the unlucky Provost, and brought him to book. “He came into the room shaking and trembling and clearly ashamed of himself,” Mr. Dundas wrote to Lord Melville that afternoon. There was no more backsliding in the town council; but the retirement of Lord Melville from the Admiralty, at the crisis of 1827, involved his retirement from the management of Scottish business. The whole system of conducting the affairs of Scotland was changed when Mr. Canning’s Government came in. His first intention had, indeed, been to hand over Scotland to Lord Binning. But some of the Whigs objected; and no Scottish Manager was appointed. Lord Lansdowne, Murray’s friend, the Lord Henry Petty of the old Speculative days, who now became Home Secretary, looked after the business of Scotland; and Whig councils were those to which, as a

<sup>1</sup> Mr. Adam Black, founder of the well-known publishing firm of A. & C. Black, born in 1784 close to where Jeffrey had been born ten years before, was prominent in all the reform movements for many years, and Member for Edinburgh 1856–1865. He lived till 1874.

<sup>2</sup> It will be remembered that, before the Reform Act of 1832, the Members of Parliament for Scottish towns were elected by the town councils.

<sup>3</sup> The Right Hon. William Dundas, third son of the second President Dundas of Arniston, was Secretary of War 1804–1806; a Lord of the Admiralty 1812–1814; and appointed Lord Clerk Register of Scotland in 1821. He sat for Edinburgh till 1831. At the general election of that year the town council elected Mr. Robert Adam Dundas (grandson of the second President Dundas), who defeated Jeffrey, then Lord Advocate. The numbers were 17 for Dundas, 14 for Jeffrey, and 2 for the Lord Provost.



Whig, he naturally listened. Although it was hoped by the more sanguine members of the Tory party that the Piebald administration, as this coalition Government was nicknamed, would shortly succumb between the hostility of the great body of the Tories and the lukewarm support which was all that could be expected from the Whigs, still the Canning schism dealt the Scottish Tory party a blow from which no complete recovery was ever made.<sup>1</sup>

There seems to have been some doubt in May, 1827, as to whether Sir William Rae would remain Lord Advocate in the Canning administration; and it was believed that if a Whig was appointed the choice would lie between Jeffrey, Moncreiff, Murray, and Cockburn. Rae, however, continued in office during the Canning, the Goderich, and the Wellington administrations. But the old order was passing away; and when, in 1829, Moncreiff, the chairman of the Pantheon Meeting, took his seat on the bench, and Jeffrey, editor of the *Edinburgh Review*, became Dean of the Faculty of Advocates, there must have been people in Scotland who felt as if the end of the world was at hand.

During these years Murray was a great favourite with Sir Walter Scott. He was one of the guests at the first dinner party given by the Scotts after "the awful 17th January"—the fatal day of their catastrophe. This was in February, 1826; and in December of that year Murray gave his last bachelor dinner. Scott was there, and also Jeffrey, Cockburn, Rutherford,<sup>2</sup> and some more of the Whigs. "Very pleasant—capital good cheer and excellent wine—much laugh and fun," Scott says. "I do not know why it is that when I am with a party of my Opposition friends, the day is often merrier than with our own set. Is it because they are cleverer?" Not entirely, he thinks, though Jeffrey and Cockburn are, to be sure, very extraordinary men. He

<sup>1</sup> Local dissensions, connected particularly with the representation of Midlothian, were at this time dividing the Tory party in Scotland. This appears from private letters of 1827–1828, some of which are printed in *Arniston Memoirs* (1887), pp. 332–342.

<sup>2</sup> Andrew Rutherford, afterwards Lord Advocate

accounts for it by the feeling of novelty, and the desire to be courteous and pleased on such occasions.<sup>1</sup>

Later in that month Murray wedded Mary, daughter of William Rigby, of Oldfield House, in Cheshire. It was a fortunate marriage. She was a bright and clever woman, who soon became very popular in Edinburgh, where she is still remembered by some who knew her in their youthful days. Scott met her first at the Jeffreys' house, and found her "amiable and accomplished," and a brilliant musician. In the spring of 1827 there was a visit to Abbotsford. "I like her very much," Scott writes, "and think he has been very lucky. She is not in the vaward of youth, but John is but two or three years my junior. She is pleasing in her manners, and totally free from affectations; a beautiful musician, and willingly exerts her talents in that way; is said to be very learned, but shows none of it." They often met, in Edinburgh and in the country. "Murray's parties are always agreeable and well chosen," is the last entry on this subject in Sir Walter's diary.<sup>2</sup> But the intimacy continued; and Murray must have heard with indignation of the scene at Jedburgh, when the rabble mobbed the old man, when, in failing health, he went to vote for the Tory candidate at the general election 1831, and thought of it with regret, as many did, when, in the autumn of next year, the remains of Scott were carried into the ruins of Dryburgh Abbey.

When Lord Grey came in on the fall of the Wellington administration, in November 1830, Brougham wrote to Murray asking what he, Jeffrey, and Cockburn thought about filling the offices of Lord Advocate and Solicitor-General for Scotland, and suggesting that John Hope, who had been Solicitor-General in the late Government, might be made Lord Advocate in place of Sir William Rae.<sup>3</sup> Hope, though he sent in his resignation as soon as he knew that

<sup>1</sup> *The Journal of Sir Walter Scott*, I. 320.

<sup>2</sup> July 8, 1829.

<sup>3</sup> John Hope was the son of Lord President Charles Hope. In 1822, when he was an advocate depute under Lord Advocate Rae, he and another

the Duke of Wellington had retired, was ready to take office under Lord Grey ; and a rumour that this was to be arranged had, by some means spread amongst the Scottish members in London.<sup>1</sup> Murray consulted Jeffrey and Cockburn on the subject of Brougham's letter ; and they at once dismissed the suggestion about Hope as absurd. " We three," Cockburn says, " held a Wittenagemote, which I wish the slaves of office had seen, for three more disinterested fools they have no idea exist." They talked the matter over. Cockburn was a poor man, and entirely dependent on his profession. " The office of Lord Advocate," he wrote, " nearly ruins the practice of any counsel, it leads him into great expense, and obliges him to lay out at least one third of his salary yearly or so, in getting or keeping a seat. In these circumstances, nothing but necessity to the cause will ever make me Advocate." <sup>2</sup> He was, however, anxious to be Solicitor-General.

Jeffrey was in a different position. He had " a little of the same repugnance to the Advocateship " ; but he was now a wealthy man, and ready to take that office. Murray, though he was senior to Cockburn at the bar, refused to stand in the way. " I have no right to speak for Murray," Cockburn wrote to Mr. Kennedy, " but I may tell you that he says positively that he will take no office, at least none of these. He won't on any account allow himself to be preferred to me or Jeffrey."

Murray stood aside, and wrote to Brougham recommending Jeffrey for Lord Advocate and Cockburn for Solicitor-General. Brougham's next plan was that Murray and Cockburn should be jointly Solicitors-General. To this Cockburn would not agree. He thought it would make the

of the deutes sent letters to Mr. James Abercromby (afterwards Speaker) attacking him for a speech he had made in the House of Commons on the conduct of the Lord Advocate. The Commons resolved that the letters were a breach of privilege ; and the deutes were summoned to the bar of the House, where they made an apology. Hope became Solicitor-General in 1825, and in December, 1830, succeeded Jeffrey as Dean of Faculty.

<sup>1</sup> *Scotsman*, November 24, 1830.

<sup>2</sup> To Thomas Francis Kennedy, M.P. for the Ayr district.



party ridiculous. "A division of one cherry to please two Whigs," he called it ; and, besides, "coming, as it seems to do, from Brougham, who is a thousand times more the friend of Murray than of me, it is Murray's office in truth and justice, and it is paltry in me to come, through his kindness, between him and his fair right." In the end the offices were filled in accordance with Murray's advice to Brougham. Jeffrey was Lord Advocate, and Cockburn was Solicitor-General.

Meanwhile petitions in favour of Parliamentary reform had been sent up from all parts of Scotland ; and a public meeting to support the Whig administration was held in Edinburgh on the 3rd of December, 1830. Jeffrey and Cockburn were not present, as at that time it was thought that the Lord Advocate and Solicitor-General should not appear on public platforms. They relied on Murray "to give and preserve the right tone."<sup>1</sup> The Meeting took place almost on the very spot where, fifty years later, Mr. Gladstone made the first speech of his Midlothian campaigns. The chairman was that tireless organizer of the Whigs, Mr. Gibson Craig of Riccarton.<sup>2</sup> Murray opened the proceedings by moving a resolution condemning the state of Scottish representation. He had an easy task. The population of Scotland was, in round numbers, two millions four hundred thousand. The franchise was in the hands of about three thousand persons. The county franchise was the privilege of the freeholders, and of these fully one-half possessed no property, but had merely voting qualifications which had been created, for party purposes, by the leading Whig and Tory families, which had thus the power of returning the county members. The town members were returned by self-elected town councils. Edinburgh had thirty-three electors, the members of the town council ; but the average number of voters in a Scottish town was nineteen, the average number of members in the corporations.

<sup>1</sup> Cockburn to Kennedy, December 2, 1830.

<sup>2</sup> Afterwards (1831) Sir James Gibson Craig.

The distribution of seats was, moreover, grossly absurd. Glasgow, for instance, with a population approaching one hundred and fifty thousand, shared a member with Renfrew, Rutherglen, and Dumbarton, whose united populations came to a little more than ten thousand. Paisley, Greenock, Kilmarnock, and Falkirk, with a population of more than seventy thousand, had no representative in Parliament. But five small places in Fifeshire, the united populations of which amounted to only six thousand, sent a member to the House of Commons. Murray's attack on these abuses, very long, very witty, and also very practical, was, the reporter says, "often interrupted by rapturous applause." Cockburn was delighted. The meeting, he told Mr. Kennedy, had gone off admirably. Murray's speech was, he heard, excellent; and "except an indication for Ballot, which Craig instantly put down, as not within the requisition, there was no approach to Radicalism. A shilling at the door always excludes that virtue."

After a struggle of nearly eighteen months, not a very long time in which to accomplish what was practically a revolution, the Reform Bill for Scotland passed in July, 1832. Even at the crisis of May, when Lord Grey resigned and the Duke of Wellington tried to form a Ministry, order had been maintained in Scotland. The feelings of the people, Cockburn wrote to London, were deep and intense; but they would continue to obey the law. "Everything here, all over Scotland, is as could be wished. The people like rocks—and volcanic rocks—but perfectly peaceable."

Preparations for the first general election under the new franchise began at once; and Murray threw himself heart and soul into the work of organization. He was himself to stand for the Leith district, a constituency created by the Reform Act; but he did not confine his energies to securing his own election. "I would," Andrew Rutherford writes to Mr. Kennedy, "you saw our friend Murray at present, with two committee rooms in his own house, where the election business of Edinburgh, Leith and Midlothian

is meant to be discussed and arranged by committees and sub-committees without end, and with his usual appliances of red, blue, and black ink. I never saw him so thoroughly distracted with multiplicity of cares, partly assumed, partly thrust upon him. He has got quite keen about his own election, to the extent, think of that, that he goes to church every Sunday at some one or other of his sea-ports."<sup>1</sup>

The Whig doctrine was that the real power of the State should be in the hands of an educated class with a certain stake in the country, and that the most beneficial and secure form of government would be attained by a Parliament in which neither the Lords nor the Commons sought to wield supreme authority over legislation and the national policy.<sup>2</sup> But this sound doctrine was repudiated by a section of the Scottish people which called for universal suffrage, the destruction of the House of Lords, the abolition of Church property, and other sweeping changes; and disputes in the ranks of the reformers began a long contest between two factions in the Scottish Liberal party.

No accusation was oftener brought against the Whig leaders in Scotland than the accusation that they were a band of place-hunters, most of whom were lawyers. This charge was used with peculiar force against Murray, who still held the office of Clerk of the Pipe. He was nicknamed The Piper, and described in election literature as a sturdy

<sup>1</sup> Some unmarried women who were occupiers of houses claimed the right to vote, because in the Scottish Reform Act the word "persons" was used instead of "males." Murray was much perplexed by this; but the claim was not taken seriously. "If you have given votes to women," said Rutherford, "what a regular *sans culottes* administration you will be."

<sup>2</sup> "It is of the utmost importance to associate the middle with the higher orders of society in the love and support of the institutions and government of the country. It is essential to avoid the recognition of separate interests in the state, to blend all interests in various proportions, and, above all, not to hold up the landed aristocracy as an odious class, having a separate interest and a distinct power in the government of the country."—*Memorandum of Proposed Reform in Scotland*, sent to Lord John Russell, November, 1830.

jolly-faced fellow, who lived by playing a useless pipe. He would play any tune, if only he was paid with votes, the electors were told, and play it anywhere, in the town hall, at the Market Cross, or on the golf course at Musselburgh. "Out to the Cross," we read, "Mr. A. J. Murray did come, and glorious in his own oratorical eyes, and eke in those of the Whig Knight errantry, Lauder Dick and Gibson Craig, did the Clerk of the Pipe appear, haranguing dustmen, lamplighters, coalheavers, duck-weavers, and fishwomen, from the dickey of a hackney." There was a hatter, one leaflet declared, who earned a dinner by shouting, "Murray for ever" from one end of the High Street to the other, and then found out that, after all, he had no vote, as he was not a "ten pounder," but paid only thirty shillings a year of rent. "Happy merchants of Leith!" said a placard. "Fortunate fishmongers of Newhaven! Rejoice that the Clerk of the Pipe is your own! No matter that he knows nothing of your interests, cares nothing about trade, never spoke to one of you till he addressed you, like some hero of old, from his chariot. No matter that he is a mere dependant of the Ministry, the holder of a sinecure the very name of which provokes laughter." And so on. The walls were covered with bills; and the streets rang with the noise of people singing a new song, "The Clerk of the Pipe, or the Leith Reform Garland," which the Tory Committee printed.

The newly enfranchised voters, however, did not forget that if it had not been for the Whigs self-elected corporations would have still been nominating Members of Parliament for the towns of Scotland, and that if many peers and landowners had not been Whigs there would have been no popular representation of the counties. The Leith district, moreover, was a constituency created by the Whig Reform Act; and so strong was the feeling in favour of Murray that an Opposition candidate who had been canvassing the electors withdrew on the nomination day. The Clerk of the Pipe was, therefore, returned unopposed, and "chaired" all the way from Leith to his house in George Street, Edin-



burgh.<sup>1</sup> "I never," says Cockburn, "saw a more beautiful spectacle than his cortège of flags and music; masses of sailors and old fishermen; models of ships, etc; he himself seated on a chair placed on a large board, looking as large and gracious as if he were M.P. for Scotland."<sup>2</sup>

At first the Opposition believed that they would carry many seats in Scotland, and that their chances were not so bad as had been feared.<sup>3</sup> But when the last of the elections was decided it was found that the Scottish counties had returned twenty-one Whigs to nine Tories, and the towns twenty-two Whigs to one Tory.<sup>4</sup> For Edinburgh Jeffrey and Mr. James Abercromby, afterwards Speaker of the House of Commons, were returned by a large majority over Mr. Hunter Blair; and in Midlothian the Whig candidate, Sir John Dalrymple, afterwards the eighth Earl of Stair, defeated Sir George Clerk by sixty-five votes.

When Parliament met, on the 29th of January, 1833. Murray was in his place. He voted in the majority against Mr. O'Connell's amendment to the address,<sup>5</sup> and made his first speech, a very short one, in support of the petitions presented by Mr. Grote in favour of allowing a declaration to be made by those who had a conscientious objection to taking an oath.<sup>6</sup> He spoke at some length on the 14th of June, during a debate in Committee on the Arrears of Tithes (Ireland) Bill, when, in answer to Mr. Shaw, one of the Members for Dublin University, who had said that to touch the property of the Irish Church would be to destroy the constitution, he argued that the Protestants were only a fraction of the Irish people, and that, as the property held by the Established Church had been taken from the Catholics

<sup>1</sup> "The first popular chairing that ever was in Scotland."—Cockburn, *Journal*, i. 42.

<sup>2</sup> *Letters on the Affairs of Scotland*, 436.

<sup>3</sup> Lord Aberdeen to the Duke of Wellington, August 23, 1832 (*Wellington Despatches*).

<sup>4</sup> For the Inverness district, where Colonel Baillie won by seven votes.

<sup>5</sup> *Hansard*, xv. 459 (February 8, 1833).

<sup>6</sup> *Ibid.*, 1293.

by Parliament, there was no reason why Parliament should not exercise its legislative authority over it.<sup>1</sup>

Before the end of that session Jeffrey, in doubt as to the stability of the Government, and exhausted by the incessant worry of his office as Lord Advocate, told his friends that he wished "to retreat to a calmer and less elevated position"; and in May, 1834, when there was a vacancy in the Court of Session, he went on the bench.

Murray was appointed Lord Advocate, and had therefore to present himself at Leith for re-election. For a long time Lord Grey's Ministry had been losing ground. In May, 1833, this had been seen when Sir John Hobhouse was defeated at Westminster. Sir John Campbell, appointed Attorney-General, was thrown out at Dudley on seeking re-election, and had now been without a seat for three months. Perthshire had just been lost.<sup>2</sup> Murray sat down with his lists and coloured inks, and went into the situation. It was certain that the Tories would run candidates both for Edinburgh, now vacant by the retirement of Jeffrey, and for Leith. The Radicals, too, might contest both seats. At the general election they had supported the Whigs; but now they threatened to oppose any candidate who did not pledge himself to vote for disestablishment, or at least for the abolition of Church patronage.

Murray felt safe at Leith. His difficulty was Edinburgh, where the Radicals had gained strength from "those cursed Church questions," as the Solicitor-General put it, when Murray had told him the state of things in the city. "If a good candidate occurs to you," he wrote to Mr. Kennedy, "do mention him immediately. The Tories and Radicals won't join here; but then the Radicals, who have no chance themselves, will rather let a Tory in than join us." They would, he complains, make the election a purely Church question, in which they would be joined by all the dissenters.

<sup>1</sup> *Hansard*, xviii. 836.

<sup>2</sup> Lord Ormelie, Whig member for Perthshire, went to the Upper House as Marquess of Breadalbane, and Sir George Murray won the county against Mr. Robert Graham of Redgorton on May 5, 1834.

Therefore the Government must find a man "to put them down, or coax them." Such a man was found in Sir John Campbell, who was sent to Scotland in the hope that, as a Scotsman, he would know how to manage his countrymen.

These by-elections at Edinburgh and Leith took place during the first rumblings of the storm which, in a few years, swept over Scotland. Church patronage was an ancient bone of contention. When the Presbyterian system was finally established, after the revolution of 1688, the right of presentation to livings was given, by a statute of the Scottish Parliament, to the Protestant landowners and elders in each parish. At the Union this settlement was declared to be unalterable. But in 1712, after the fall of the Whigs and during the administration of Harley and St. John, the old patronages were restored. The presbytery still retained the right to examine the person presented to a living, and could reject him if they did not find him duly "qualified."<sup>1</sup> A "call" by the congregation was necessary.<sup>2</sup> But differences between the patrons and the people gave rise to frequent disputes, which caused two great secessions within fifty years. The "moderate" party in the Church sacrificed the people to the patrons, whose nominees were ruthlessly intruded on parishes against the wishes of the parishioners. These intrusions, which violated a principle which the Church had frequently asserted, "that no minister shall be intruded into any parish contrary to the will of the congregation," produced such discontent

<sup>1</sup> It must always be remembered that in Scotland ordination and induction to a living take place at the same time, except when an ordained clergyman is translated from one living to another.

<sup>2</sup> From the earliest period of the Presbyterian Establishment the "call," or invitation, by the people was an essential part of its constitution. The call was signed by landowners, elders, and other parishioners, and without it no person was inducted to a living. But after the restoration of the old patronages in 1712 irregularities became common, and there were cases in which papers signed by persons who were not parishioners, or even members of the Church of Scotland, were recognized as valid calls. In one case a paper without any signature was accepted as a call to the living, one landowner having sent a letter approving of the person chosen by the patron.



that ordinations to the spiritual office were sometimes carried out only with the help of the civil power, which was called in to overawe the parishioners.<sup>1</sup> The inevitable result followed. The Church lost much of its influence. Dissent flourished; and when the reaction against the Moderate party came, it came too late to prevent that agitation against the principle of State Churches which plunged the country into what is known in Scottish history as the "voluntary controversy," a war of the platform and the pen, during which the relations of the State to religion were wrangled over with a virulence unusual even in ecclesiastical disputes.

This acrimonious controversy was raging when the Reform Bill passed; and at the first general election under the new franchise it was apparent that one section of the people, composed of uncompromising supporters of the voluntary principle, believed that with the franchise they had acquired the means of destroying the Established Church, while another section hoped that the abuses which had long weakened the Church would now be removed. There can be little doubt that in Scotland, especially in the country districts, the ties of party were really weaker than the ties which bound the electors to the cause of Church reform. There is the testimony of competent observers that the farmers and villagers supported Lord Grey's administration in many cases because they believed that the return of a Whig majority would give them control over the appointment of their parish ministers.

During the first elections after the Reform Act Murray and the other Scottish advisers of the Government had been in the utmost perplexity. The dissenters were, if possible, to be conciliated. In some constituencies the result de-

<sup>1</sup> "The great complaint of our more ancient Assemblies, the great burden of Scottish indignation, the practical grievance, which, of all others, has been hitherto felt the most intolerable and galling to the hearts of a free and religious people, is the violent intrusion of ministers upon parishes."—Chalmers (Speech in General Assembly of the Church of Scotland, May 23, 1833).

pended on their votes ; but the aim of the dissenters was disestablishment, and to disestablishment all genuine Whigs were at that time resolutely opposed. On patronage the Whigs were divided. Some were for the abolition of patronage. Others threatened to leave the party if patronage was touched. It was obvious that a crisis was approaching, and that something must be done.

After the elections, when the Whigs had been returned to power with an enormous majority, it was understood that a measure dealing with patronage would be introduced ; but it leaked out that Lord Grey had been pressed to bring in a bill under which the ecclesiastical courts would not possess what the Church specially claimed, the power of deciding whether the ordination of the person presented to the living would be for the religious advantage of the parish, and that, moreover, the patronage was to be transferred, for political reasons, to the Parliamentary electors. Some, however, of the Whig leaders in Scotland, to whom this curious project had been revealed, objected so strongly that the Cabinet resolved to leave the question of the Scottish Church alone.

Chalmers suggested as “ a practical measure,” a committee of inquiry ; but the Lord Advocate (Jeffrey) withheld his consent, in the hope that the Church might devise some means of settling the question without the interference of the Government.<sup>1</sup> Chalmers and his party now resolved to propose that, in order to prevent intrusions, the “ presentee,” as the person chosen by the patron was called in Scotland, should not obtain the living if a majority of the male heads of families, being communicants, objected to him. If this plan had been carried into effect under the sanction of an Act of Parliament, the disasters which in a short time overwhelmed the Church of Scotland would have been avoided. Unfortunately another course was taken. In the opinion of Jeffrey, the Lord Advocate, of Cockburn, the Solicitor-General, of Moncreiff, and of other

<sup>1</sup> *Memoirs of Chalmers*, iii. 350.

notable lawyers, the Church had full power to settle the whole matter by an Act of the General Assembly. Those who read the pleadings of counsel at the bar, and the opinions of the judges, when, a few years later, the question came before the courts of law, may think that, on the whole, the weight of legal authority was heaviest on the side of Chalmers and his party, though against them there was at least one important voice, that of Thomas McCrie, the learned biographer of Knox, who, though neither a lawyer nor a member of the Established Church, had studied the ecclesiastical history of Scotland perhaps more deeply than any jurist or Churchman of his day. He thought that the opinion of the law officers was open to doubt, and that the sanction of Parliament should be obtained. Chalmers himself believed that the Church had power to settle the question; but, doubts as to the legislative authority of the Assembly having been expressed, he was in favour of going to Parliament, on the ground that it would be wiser "to free the matter at once from all risk and uncertainty." Influenced, however, by the opinion of the law officers, and by Moncreiff's warnings against an application to Parliament, where the question would be decided by Englishmen, with English views on Church and State, he agreed to the proposal that the Church itself should proceed to legislate. Within two years the General Assembly passed an Act the fruits of which are to be seen in Scotland to this day.

In 1833 Chalmers asked the Assembly to make a law giving the heads of families power to veto the appointment of the clergyman chosen by the patron, absolutely and without stating any reasons, so as to make the call really efficient, and prevent intrusions. The leaders of the Moderate party admitted that the people should have an opportunity of objecting to the presentee. But to the absolute veto they would not agree. Reasons must, they said, be given; and on these reasons the presbytery would decide. Each party maintained that the law was on its side; and the debate turned largely on the interpretation of the statutes relating to patronage. Both sides saw that some change was

necessary ; but on the question of whether the Church had power to enact the law proposed by Chalmers there was a sharp division of opinion. As to that Moncreiff had no doubt. " I cannot see," he said, " that the General Assembly has not the power to lay down a rule for the instruction of the presbyteries of this Church in a matter which is evidently within the jurisdiction of the Church Courts." The other side maintained, with equal confidence, that the Assembly would go beyond its legal powers if it instructed the presbyteries to recognize the absolute veto. This, it was foretold, and, as the event proved, with good reason, would lead to a collision between the civil and the ecclesiastical courts. The patron would assert his rights ; and, as the law stood, the civil courts would be bound to support him. In the end the proposal of Chalmers was defeated, but only by twelve votes.

The agitation on the patronage question became so violent that the Government yielded ; and a committee of inquiry was appointed in February, 1834. Many witnesses were examined ; but nothing practical followed. In the General Assembly of May, 1834, of which Chalmers was not a member, Moncreiff moved that a law be passed declaring that if a majority of the male heads in any parish disapproved of the person presented by the patron, their disapproval should make it necessary for the presbytery to reject him. The evangelical party was now in the ascendant, and the motion was carried by a majority of forty-five.

This vote of the Assembly was taken late at night on the 27th of May, 1834, during the by-election at Edinburgh. Next day Sir John Campbell, in a speech to the electors, said, " I rejoice to think that not many hours since a law has gone forth from the General Assembly, which may have, under the blessing of Providence, the effect of reforming the Church of Scotland, and bringing it back to the standard of its former purity, and removing from it every objection, and every complaint." <sup>1</sup> This rejoicing was pre-

<sup>1</sup> *Scotsman*, May 31, 1834.



mature. We should do 'a great injustice to the authors of this enactment if we doubted the purity of their motives, and did not bear in mind that they framed it with the assent of the law officers of the Crown. Nevertheless the fact remains that, within a few years, the "Veto Act," thus passed by the General Assembly, and afterwards approved by the presbyteries throughout the country,<sup>1</sup> produced that contest between the Church and the civil courts which ended by breaking up the Scottish Establishment. This conflict of jurisdictions affected the secular as well as the ecclesiastical affairs of Scotland to such an extent that, with scarcely an exception, every Lord Advocate who was in office during the rest of the nineteenth century, had to deal with some difficult question arising out of the eventful transactions which occupied the courts of the Church and of the State, between 1834, the year of the Veto Act, and 1843, the year of the disruption of the Church.

The elections for Edinburgh and Leith were in progress during the sittings of the General Assembly. At Edinburgh it was easy for the Attorney-General, who played the part of a popular candidate by going about in an old blue frock coat, dingy white trousers, rough shoes, and with no gloves, to talk down both Mr. John Learmonth, a coach-builder who had made a fortune and come out as the Tory candidate, and "Citizen" Aytoun, who stood for the Radicals. "That Church question has been the only devilry," said Cockburn, "but he has steered through its breakers very skilfully." At Leith Murray was opposed by Mr. William Aitchison, younger, of Drummorie in Haddingtonshire, who did his best, but was no match for the new Lord Advocate; and it was soon apparent that the Whigs would win both seats. "It will be a rout of the enemy at Leith," Cockburn predicted, "Murray is in a dream if he don't beat them by three to one. I am by no means

<sup>1</sup> In accordance with the constitution of the Church of Scotland the Act was sent down to the country, and could not take its place among the permanent laws of the Church till it had been approved by a majority of the presbyteries.

certain what the majority will be here ; but I think there is no doubt now that there will be a majority. It will be the greatest victory of Whiggism, if it shall prevail over both Radicals and Tories ; but it is to be lamented that the folly of the Radicals has prevented the general body of the Liberals showing an unbroken front to the common foe."

At the hustings, on the nomination day for Leith, the Tory candidate asked the electors to return him on the ground that they should not be represented by a placeman. His proposer, a Mr. Hardie, took the same line. Mr. Murray, he said, had been elected after the Reform Act as a friend of the people, but now,—“Behold the Lord Advocate of Scotland, the public prosecutor, one who possesses arbitrary power in a greater degree than any officer under the British Constitution.” He went on to accuse Murray of having sneered at the electors of Leith. Murray called out that this was untrue, and insisted on the speaker giving his words. Mr. Hardie replied that he had heard it from one of Murray’s friends. On this, “the Lord Advocate, evidently much excited, asked not to be told what any friend said, but what he had said himself. ‘There,’ pointing to Mr. Hardie, ‘is a man who comes forward with a calumny in his mouth, which every one knows to be untrue.’”<sup>1</sup> This was followed by “great confusion”; but Murray silenced his opponent, and the show of hands was in his favour. A poll was demanded, and the polling was fixed for the 1st of June. The Edinburgh election was to be on the same day.

During the night before the pollings a King’s messenger arrived from London with letters to Sir John Campbell, telling him that the Duke of Richmond, Lord Ripon, Mr. Stanley,<sup>2</sup> and Sir James Graham had resigned, and that the fate of the Government “might depend on carrying Edinburgh.” An express from the Carlton brought the news to the Tory committee ; and the town was at once

<sup>1</sup> *Scotsman*, May 28, 1834.

<sup>2</sup> Afterwards Lord Stanley, and (June 1851) Earl of Derby.

covered with placards announcing the "utter ruin of the Whig cause." The Whigs replied by congratulating the electors on the resignation of Ministers, who, they said, had been a cause of weakness to the Government. In the end, both the law officers were re-elected. The Attorney-General had a majority of 531 above Mr. Learmonth, while the Radical candidate, who obtained only 480 votes, was at the foot of the poll. The Lord Advocate's majority at Leith was 237.

When Lord Grey resigned in July, Murray remained Lord Advocate in the Melbourne administration, and was a prominent figure at the dinner given to Lord Grey at Edinburgh on the 16th of September (1834). Lord Rosebery was in the chair; and Murray was in his element at the other end of the table with Lord Dalmeny and Sir John Campbell beside him. He proposed three toasts, and, judging by the "cheers" and "laughter" with which the reporter sprinkles his speeches, seems to have been well received. The strained relations which existed between Lord Grey and Brougham had not prevented the Lord Chancellor coming to this dinner; and when his health was proposed by Lord Rosebery he delivered a long oration, in which he spoke about men who thought action was everything, and that time spent in careful preparation of measures was time thrown away. He described them as men "of great honesty, much zeal, and no reflection," who would go on a voyage to unknown regions without waiting to see if the compass was on board, and who, if the port came in sight, would not wait for five minutes to go round to it, but would run the vessel ashore among the breakers. "We shall," he said, "go on, heedless of the attacks of these hasty spirits."

Brougham had already offended the extreme men by saying that he thought the Government had done too much rather than too little, and Lord Durham, who was at the Grey dinner, and whose health the Lord Advocate proposed, made a point of showing that he disagreed with the Lord Chancellor. "My noble and learned friend," he said, "has



been pleased to give some sound advice to certain classes of persons, of whom, I confess, I know nothing except that they are persons whom he considers as evincing too much impatience. I will freely own that I am one of those who see with regret every hour which passes over the existence of acknowledged but unreformed abuses.”<sup>1</sup>

This was understood as a complaint that the Whig administration had not done enough. Such had been, for some time, the opinion of the Radicals in Scotland. They were burning with impatience. Many of the newly enfranchised reformers did not see that everything they hoped for could not be done at once. “In the first flush of their liberation,” says Cockburn, “every one desirous of distinguishing himself by his little bit of reform, rushed to the Lord Advocate, and if he found that Government or Parliament were not to concede in a moment all that he wanted, abused his Lordship as a changed man.” The hasty spirits were, however, soon to learn that they could not have everything their own way. So long as Lord Althorp remained in the Commons as Chancellor of the Exchequer and leader of the House, the Government retained the semblance at least of vitality. But in the autumn he was called to the Upper House.<sup>2</sup> This caused the crisis—a singular tribute to the value of the man who used to say that, while nature had meant him for a grazier, his friends insisted on making him a statesman—which put an end to the first Melbourne administration. On the 14th of November, the Ministers were peremptorily dismissed from office by the King. Sir Robert Peel was recalled from Rome, where he was spending the autumn; and thus only a few weeks after the festival in Edinburgh a Tory Ministry was once more in power. Parliament was dissolved; and Peel went to the country on the principles contained in the famous

<sup>1</sup> *The Grey Festival; being a Narrative of the Proceedings connected with the Dinner given to Earl Grey*, p. 61. Lord Grey is said to have been so offended with his son-in-law for this speech that it led to something very like a permanent estrangement.

<sup>2</sup> Earl Spencer died on November 10, 1834.

Tamworth Manifesto. At the general election Murray was returned, without opposition, for the Leith district. At Edinburgh, Sir John Campbell and Mr. Abercromby had to fight two Conservatives, as the members of the old Tory party were now usually called ; but they held the seat easily. Over the whole of Scotland there was no change in the towns, which again returned twenty-two Liberals to one Conservative. In the counties the Conservatives made a gain of five seats. One of these was in Midlothian, where Sir George Clerk defeated Mr. William Gibson Craig, younger, of Riccarton.<sup>1</sup> When the new Parliament met on the 29th of February, 1835, though the Conservatives had gained largely in England, Ireland, and Wales, there was an Opposition majority of more than a hundred. The Government was defeated in several divisions ; and in a short time Lord Melbourne was again Prime Minister.<sup>2</sup>

Murray was at once appointed Lord Advocate.<sup>3</sup> Seven other Scottish members had to seek re-election on taking office in the second Melbourne administration ;<sup>4</sup> and as Mr. Charles Grant, who had sat as a Whig for Inverness-shire since 1818, was raised to the peerage as Lord Glenelg, there was a vacancy in that county. The Lord Advocate was the only Scottish member of the Government who had to fight for his seat. His opponent was Admiral Sir David Milne, a veteran seventy years old, who had been made a K.C.B., and received the freedom of London for his naval

<sup>1</sup> Afterwards Sir W. Gibson Craig, Lord Clerk Register of Scotland.

<sup>2</sup> Sir Robert Peel resigned on April 8, 1835.

<sup>3</sup> Sir William Rae had been Lord Advocate, November, 1834—April, 1835.

<sup>4</sup> These were Sir Charles Adam (Clackmannan and Kinross), a Lord of the Admiralty ; Sir H. Parnell (Dundee), Paymaster-General and Treasurer of the Navy ; Sir J. Campbell (Edinburgh), Attorney-General ; Sir A. Leith Hay (Elgin district), Clerk of the Ordnance ; Mr. Robert Stewart (Haddington district), a Lord of the Treasury ; Mr. R. C. Fergusson, (Kirkcudbrightshire), Judge Advocate General ; Lord Dalmeny (Stirling district), a Lord of the Admiralty. Lord Dalmeny, son of the 4th Earl of Rosebery, predeceased his father, but, having married Lady Catherine Stanhope, left two sons, the elder of whom became Earl of Rosebery on the death of his grandfather in 1868, was afterwards Foreign Secretary, and succeeded Mr. Gladstone as Prime Minister in 1894.

services. He had been elected for Berwick in 1820, but had no great knowledge of public questions. Murray's supporters did not treat this opposition seriously. "The Lord Advocate is annoyed with a canvass at Leith—that is all," said an Edinburgh paper. But Sir David was bent on making a fight of it, and came forward as "the champion of Christianity, Religion, and the Church." He is said to have also appealed to the electors on more mundane grounds by keeping open a number of free tippling shops in Leith and Newhaven. So the Lord Advocate had to appear upon the scene; and, as became the member for a maritime constituency, he left London in a steamboat, and set out for the port of Leith.

The weather was bad. He felt ill, left his berth, found a backgammon board in the cabin, and played a game to wile away the time. But it was a Sunday night, and, unknown to him, one of the passengers was a Conservative elector, who watched him, and reported what he had seen to Sir David Milne's committee, who felt it their duty to "call on all Christian men not to vote for a Sabbath breaker"; and the election was literally fought almost entirely on the question of whether a candidate who had "broken the Fourth Commandment" was a fit and proper person to represent the people of Leith, Musselburgh, and Portobello. The *Scotsman* and the *Caledonian Mercury* poured ridicule on all this, and speedily remembered a weak spot in Sir David Milne's career. He had been unseated at Berwick for bribery, or at least on account of bribery for which he was legally responsible; and this, coupled with a charge of having set up "a regular system of debauchery" in the Leith district, was used against him. The election degenerated into a perfect orgy of local personalities; and on the nomination day there was such a disturbance at the hustings that the speeches could scarcely be heard. A stone, thrown from a crowd of Murray's supporters, hit Admiral Milne's son.<sup>1</sup> The Lord Advocate called out that he wished the

<sup>1</sup> Mr. David Milne, afterwards (1852) Milne-Home. He was an advocate depute in 1835, and again from 1841 to 1845.

“ ruffian ” who threw it could be found and punished. “ The two candidates then cordially shook hands, amidst the cheers of the crowd, which immediately dispersed.” <sup>1</sup> When the first day’s polling ended the Lord Advocate was 295 votes ahead ; and later in the evening Admiral Milne retired from the contest. The polling went on next day ; and the official return (May 8) gave Murray a majority of 504. Thus all the members of the Government who had sought re-election in Scotland were successful ; but the Inverness-shire seat, vacant by the elevation of Mr. Grant to the peerage, was lost, The Chisholm having been returned by a majority of 28.<sup>2</sup>

During the next four years Lord Advocate Murray attempted a considerable amount of legislation. Court of Session reform, improvement of the Scottish Universities, reform of the magistracy in the smaller towns, Sheriff Court procedure, and the abolition of imprisonment for debt, were among the subjects dealt with by the numerous bills which he prepared. But he accomplished little, and made no important additions to the statute law of Scotland. From his garden at Bonaly Cockburn, who was now a judge, watched the Parliamentary failures of his friend.<sup>3</sup> Writing in August, 1836, he says, “ When the Lord Advocate left Scotland last February he took the drafts or schemes of a shoal of bills touching Scotland with him. The session will be over in about a week, and not one of the more difficult and important of these bills has been passed. Two or three, which had passed the Commons, were rejected by the Lords ; several stuck in the Commons ; and the majority never moved at all after being introduced.” <sup>4</sup> An angel, he

<sup>1</sup> *Caledonian Mercury*, May 4, 1835.

<sup>2</sup> Alexander William Chisholm, chief of the clan Chisholm, resigned his seat in 1838, and died soon afterwards. A Memoir of him, by J. S. M. Anderson, was published in 1842. It will be remembered how one of the family said that only three persons in the world could call themselves “ The ”—the Pope, the King, and the Chisholm.

<sup>3</sup> Cockburn had been on the bench since November, 1834.

<sup>4</sup> The Lord Advocate’s name was on the back of fifty-one Scottish bills brought in between 1835 and 1839. Of these twenty-two passed. In 1837 of thirteen Scottish bills only four passed : *An Account of all Bills*



said, could not have carried these bills if he had been Lord Advocate of Scotland. His view was that before the Reform Act it was possible to secure some time for Scottish business. There were then no "self-willed Scottish Members" insisting that everything must be done at once, while, at the same time, there was always some powerful Minister to see that the Lord Advocate was supported by the full strength of the Government. But now the Lord Advocate was left to fight his own battles against the English Members, who took up the whole time of the House. Thus Scottish legislation was pushed aside; and for this the only remedy was a separate Scottish department, which could act with the authority of the Cabinet.

Murray went on the hustings for the fifth and last time at the general election which followed the accession of Queen Victoria. The old King died on the 20th of June, 1837. Parliament was dissolved on the 17th of July. On the 24th the Lord Advocate was returned, without opposition, for the Leith district; and two days later Campbell and Abercromby became once more the Members for Edinburgh. These elections excited little interest; but in Midlothian the result was doubtful. The candidates were Sir George Clerk and Mr. William Gibson Craig, who was proposed by Lord Dalmeny. "The interest excited by this election among all classes is beyond all former example," says the *Courant*. There had been two elections since the Reform Act. The first had been won by the Whigs, the second by the Tories, who were now defending the seat under their new name of Conservatives. The voting began at 9 o'clock in the morning of the 1st of August; and when the poll closed at 4 o'clock next day the Conservatives had lost by 42 votes.<sup>1</sup>

*relating to Scotland introduced into Parliament in each year from 1835 to 1839 inclusive, distinguishing those which became law, and those which passed, or did not pass, the House of Commons.*—Parl. Papers, 1841 (433), xiv. See also *Return of Acts of Parliament, showing the number passed for England and Wales, Scotland and Ireland from 1800 to 1833.*—Parl. Papers, 1834 (411), lxviii.

<sup>1</sup> Gibson Craig 703, Clerk 661. The Liberals did not win another Midlothian election for thirty years.

By the 12th of August the elections in Scotland were finished. The Conservatives had gained seats in the counties of Caithness, Ross and Cromarty, Sutherland, Wigtown, and Perth.<sup>1</sup> But they had lost Midlothian, Roxburghshire, Banffshire, and Orkney and Shetland. They had gained a seat in the Kilmarnock district, but had lost the Inverness district, which left the Scottish towns represented by twenty-two Liberals and one Conservative, as in the last Parliament.

In England the Liberal strength was so much reduced that the Government majority had fallen from more than a hundred to barely forty. The attachment of the young Queen to the Whig Ministers made her unpopular with the Opposition ; and party feeling ran so high that the *Quarterly* published an article which seemed to regret that the Salic law was not the law of England.<sup>2</sup> And while many in the upper ranks of society were disaffected to the Sovereign, the lower orders were seething with discontent. The clever young Jewish dandy, at whose affectations people laughed, and of whose genius so few but himself were then aware, had not yet written about the two nations ; but the two nations were there, and in Scotland as well as in England the perpetual conflicts of capital and labour raised questions with which neither of the great parties was inclined to grapple. Those who occupied themselves with devising methods for solving the time-worn problem of industrial unrest propounded such remedies as the repeal of the corn laws ; emigration, so as to lessen the number of workmen in the country ; re-enactment of the combination laws so as to give the labouring classes freedom to work at any calling they pleased, in spite of the tyranny of the

<sup>1</sup> Mr. Fox Maule was defeated in Perthshire by Lord Stormont on May 4, 1837 ; and Lord John Russell, when reporting the result of the elections to the Queen, said that the return of Mr. Maule was hardly to be expected. "In this," he wrote, "as in many other instances, the superior organization of the Tory party has enabled them to gain the appearance of a change of opinion which has not in fact taken place." He accounted for the defeat of Mr. Hume in Middlesex in the same way.

<sup>2</sup> *Quarterly Review*, July, 1837, Article 10.

trades unions ; the establishment of a Board of Trade to fix a minimum rate of wages.<sup>1</sup>

These remedies had often been discussed in Scotland. The official Whigs were not yet converted to the repeal of the corn laws, though the *Edinburgh Review* had already condemned the policy of protection.<sup>2</sup> The political sympathies of Chalmers were conservative ; but, working in the slums of Glasgow, he had long ago spoken out in favour of repeal. To abolish the corn laws, and lessen the burden of taxation on the chief necessities of life was, he said, the best way to pacify the labouring classes. Emigration had been dangled before the eyes of the workmen as a cure for all their miseries. Emigration societies had been formed. A Committee of the Commons had made a report. Thousands had left Scotland ; but the condition of the people was not improved. The crude remedy of fixing a minimum wage by law would not have been listened to in Parliament. Nor was it suited to Scotland, where most of the working men would have resented such an interference with their liberty of contract, and would have clung to the right of selling their labour at their own price. They were, moreover, far too shrewd not to see that if the employers were forbidden to combine in order to lower the price of labour below a certain point, they themselves might lose their newly gained privilege of combining to raise it above a certain point.

For the re-enactment of the combination laws, as a remedy for certain evils which the working classes were bringing on themselves, was at that time within the region of practical politics. Soon after the combination laws were repealed it was thought possible that Parliament might be compelled to retrace its steps, owing to the way in which labour agitators were abusing the liberty which they had recently acquired.<sup>3</sup> At a dinner given at Edinburgh, in November,

<sup>1</sup> *Journal of the Statistical Society of London*, July, 1838.

<sup>2</sup> *Edinburgh Review*, February, 1822, Article 6 ; September, 1826, Article 2.

<sup>3</sup> *Hansard*, xii. 1288 *et seq.* :—Mr. Huskisson's speech, of March 29, 1825, on the bad effects which had followed the Act (5 Geo. IV. c. 95) of the year



1825, to Mr. Joseph Hume, Jeffrey proposed this significant toast : " Freedom of Labour ; but let the Labourer recollect that, in exercising his own right, he cannot be permitted to violate the rights of others " ; and his speech was a warning to the working classes that their hard-won liberties were endangered by the conduct of their leaders.<sup>1</sup>

Chalmers, who had studied this question deeply, saw that grave evils must be expected if certain tendencies among the working population were not firmly checked. He was against the re-enactment of the combination laws, and said that nothing had been more likely than that the labourers, when put in possession of an altogether new power, would take a delight in the exercise of it. He compared the conduct of the trades unionists to that of the French peasants after the game laws were repealed at the Revolution. " The whole population, thrown agog by their new privilege, poured forth upon the country, and, variously accoutred, made war, in grotesque and unpractical style, upon the fowls of the air and the beasts of the field." The old laws, he said, which inflicted penalties on the simple act of combining to obtain better wages, had been unjust ; but it was an undeniable crime if the members of a combination used violence, or uttered threats, against those who were willing to work. To put this down " the whole strength and wisdom of Government should be called into operation." <sup>2</sup>

Combinations of workmen now enjoy peculiar privileges ;

before, by which the combination laws were repealed. The Committee appointed on his motion led to the amending Act of 1825 (6 Geo. IV. c. 129).

<sup>1</sup> " They are asserting," he said, " the free disposal of their labour ; and their first step is to impose on all around them the most tyrannical and sanguinary restraint. They have just been emancipated from the bondage of those laws which obstructed in some degree their just liberty of working, or refusing to work, as they themselves might think fit ; and now they tell such of their fellows as do not agree in their opinions that they shall have no liberty to work, or refuse to work, except as they are directed by them. If there are to be restraints on the freedom of labour, it is unquestionably better that they should be enforced by law, than by the violence of a brutal and sanguinary rabble ; and if the great body of our workmen are not disposed to allow this freedom to each other, it is plain they have no right to claim it for themselves."

<sup>2</sup> *Christian and Economic Polity of a Nation*, chap. xv.

but no one had thought of putting them beyond the reach of the law in the year 1837, when Lord Advocate Murray had to deal with a very serious state of affairs which had arisen out of trade disputes in the west of Scotland.

For more than twenty years a formidable combination, the Cotton Spinners Association, had existed in Glasgow and the surrounding districts. It was founded to enable the members to obtain a fair price for their labour; but this Association, which might have been a most useful instrument for promoting the welfare of the working classes, became, in the hands of those who led it, an instrument of tyranny, by which the working classes were oppressed, demoralized, and impoverished. At first, before the repeal of the combination laws, the Cotton Spinners Association was, of course, an illegal society. After the statutes of 1824 and 1825 it existed under the sanction of the law. But the policy of the leaders was always the same. The articles of association provided that a general meeting might order a strike, when strike pay was to be given out of the funds, and that any member who continued to work was to be expelled. In the years between 1816 and 1837 many strikes had been ordered; and when it was found that the threat of expulsion was not enough to keep men from their work, other means were employed. Workshops and factories were set on fire. There were frequent cases of assault and intimidation. Vitriol was thrown over some of those who set the leaders at defiance. Others were shot at. There was at least one case of murder, the perpetrators of which were sent to America at the expense of the Association. Those who worked during a strike were called "Nobs"; and secret committees were appointed to persecute them. One Nob had an eye burnt out by vitriol. Others were beaten in the streets, or at their homes. In one factory women were employed, and, in order to get rid of them, a secret committee was appointed to set it on fire. In another notorious case, where a striker, convicted of shooting at a Nob, was publicly whipped and then transported to Botany Bay, his wife received twelve shillings a week for eighteen

months, and another striker was rewarded with £20 for having helped in the outrage. These sums were paid out of the funds of the Association at a time when the general body of strikers were starving on strike pay, which had fallen to ninepence a week. The system, pursued for many years, was that when a crime was committed it was publicly repudiated, while the criminals and their families were secretly rewarded.

In the spring of 1837 the spinners' earnings varied from twenty shillings to two pounds a week, according to the nature of their work. The average seems to have been from twenty-three to twenty-four shillings. The millowners, in consequence of the depressed state of trade, announced a reduction of three shillings in the pound; and at the beginning of April the Association called the workers out. For some time there were no disturbances. But the strike pay, which had begun at three shillings a week, fell to eighteen pence, and at last to ninepence; and in May crowds were parading the streets, armed with sticks, and vowing vengeance on all who worked and their employers.

The free labourers went in terror of their lives. They walked to and from their work under police protection. A "guard committee," or picket of the strikers, watched them day and night, and, if they would not yield to persuasion, assaulted them, or broke into their houses and threatened their wives. Threatening letters were sent to employers, and attempts were made to burn the mills. Few dared to work; and any who did were set upon by the pickets.<sup>1</sup> At last, late on the night of Saturday, the 22nd of July, a spinner named John Smith, who had gone to

<sup>1</sup> "Their business was to keep new hands from going in, and to take out new hands that were in, and working at a reduced rate. They first tried to advise with them, to give them drink, and make them intoxicated, and sometimes to give them a beating. That was done by the guards. They were constantly on duty, and were relieved about the middle of the day by another party. They commenced about 3 or 4 o'clock in the morning, and sometimes they were relieved twice a day till 9 o'clock at night, when the work was dismissed."—Evidence of Henry Cowan, cotton spinner, January 4, 1838.

work, was shot in the back while walking in the streets with his wife. He was carried to the infirmary, where, after informing the authorities of a warning he had received, and of his belief that he had been shot for working, he died on the morning of Tuesday the 25th.<sup>1</sup>

The Sheriff of Lanarkshire, Mr. Archibald Alison,<sup>2</sup> was told that the police knew of certain persons who were ready to give evidence if they could be protected against the vengeance of the trades union leaders. They dared not come to the Sheriff's office; but he saw them privately, and the result of what he heard was that eighteen men, all managers of the strike, were taken into custody, and the papers of the Association seized. The effect of this arrest was that on Monday the 31st of July a meeting of operatives held on Glasgow Green resolved to end the strike; and within five days all hands were back at work.

Rewards offered by the Government and the employers for the discovery of the murderer led to the arrest of William McLean, a cotton spinner, who had been acting as a picket. There was no reason for suspecting that the accused had any personal malice against the murdered man; but it was almost certain that, if guilty, he had been instigated by the officials of the Cotton Spinners' Association, for the purpose of intimidating those workmen who had not joined the strike.

The strike had nearly ruined the working classes in Lanarkshire. Drunkenness and crimes of every description were increasing. The death-rate of Glasgow had risen till it was higher than that of any other town in Europe. Great sums of money had been lost, both by the workmen and their employers.<sup>3</sup> And all this was the work of a self-constituted

<sup>1</sup> Deposition of John Smith, and evidence of Dr. Pagan: *Trial of the Glasgow Cotton Spinners*, pp. 141-142.

<sup>2</sup> Afterwards Sir Archibald Alison, author of the *History of Europe*, etc.

<sup>3</sup> "The cotton spinners' strike cost the persons who were employed in that trade, spinners, piecers, and others, above £50,000. The loss to the masters was at least as great—that to the persons they employed, or dealt with for provisions or other articles, probably still greater. £200,000



authority, which defied the law, and threw thousands of men, women, and children into idleness and starvation. It was felt to be intolerable that, in a free country, the workman should not be allowed to sell his labour at his own price ; but the ramifications of the Association were so far spread that few working men had been able to escape its tyranny. There had been, in short, a reign of terror in the west of Scotland ; and vigorous steps were now taken by the law officers to expose the conduct of the leaders, and put an end to this state of things.

The arrest of the leaders had enabled the men to return to their work ; and, after a mass of evidence had been collected, the executive of the Association were indicted by the Lord Advocate on a charge of conspiracy to raise, or keep up, the price of labour by intimidation and acts of violence against the persons and property of workmen and employers. There was also a charge of complicity in the murder of which McLean was accused.<sup>1</sup>

Though the Lord Advocate had raised this prosecution in defence of the common liberty of the subject, he was denounced by agitators as an oppressor of innocent and harmless workmen.<sup>2</sup> Petitions in favour of the prisoners, signed by persons who knew nothing of the evidence which the Lord Advocate possessed, were presented to the House of Commons.<sup>3</sup> One agitator, speaking at Glasgow, tried to incite the mob to burn the cotton mills. Another, in Edinburgh, described the judges as " five villains in scarlet," and the prisoners as " five gentlemen in black." But these ravings were of no avail ; and the trial began in the

were lost to Glasgow and its vicinity in four months, without a shilling being gained by any human being, by the strike of this trade alone. The total loss sustained by Lanarkshire between the strikes of the colliers, the ironmoulders, sawyers, and spinners, last year, was at least £500,000." —Sheriff Alison's speech at the close of Glasgow Circuit, January 12, 1838.

<sup>1</sup> McLean was charged under the same indictment. The other accused were Thomas Hunter, chairman of the Association ; Peter Hacket, treasurer ; Richard McNeill, secretary ; and James Gibb, assistant secretary.

<sup>2</sup> Cockburn, *Journals*, i. 156.

<sup>3</sup> *Hansard*, xxxix. 983.



High Court of Justiciary at Edinburgh, on the 3rd of January 1838, before Lord Justice Clerk Boyle,<sup>1</sup> and Lords Mackenzie,<sup>2</sup> Moncreiff and Cockburn. The leading counsel for the Crown were the Lord Advocate and Mr. Andrew Rutherford, who was then Solicitor-General; and the accused were defended by two of the best advocates at the Scottish bar, Patrick Robertson, afterwards Dean of Faculty, and Duncan McNeill, afterwards Lord Advocate and President of the Court of Session.

The trial lasted for eight days, during which the scandalous history of the Cotton Spinners' Association was unfolded by the examination of many witnesses. When the evidence and speeches on both sides had been concluded it seemed to those who had been in court during the proceedings—the evidence was not published till after the jury had returned their verdict—that the Lord Advocate had proved the whole of his case, including the charge of murder. The prosecution, however, had undertaken to prove so many different offences that on some of them the evidence, when minutely examined, did not appear to the bench sufficiently strong to establish the legal guilt of the accused. On the majority of the charges the jury returned a verdict of not proven; but the prisoners were convicted of the conspiracy, to expose which had been the chief object of the prosecution. The charge of murder against McLean was found not proven, the Lord Justice Clerk, in his charge to the jury, having expressed doubts as to whether it would be safe to convict him.<sup>3</sup>

The judges sentenced the prisoners to be transported beyond the seas for a period of seven years; and they were soon shipped off to London.

<sup>1</sup> David Boyle, afterwards Lord President. His father was the Hon. Patrick Boyle of Shewalton, son of the 2nd Earl of Glasgow.

<sup>2</sup> Son of Henry Mackenzie, author of *The Man of Feeling*.

<sup>3</sup> *Trial*, p. 370. Cockburn, who was not present during the latter part of the trial, having gone to the winter circuit at Glasgow, thought the case against McLean was fully proved. The defence was an *alibi*; but it was tainted by very suspicious circumstances. The Lord Advocate's comments on it were very much to the point (pp. 272—275).

This sentence was pronounced at Edinburgh on the morning of the 11th of January, 1838, the court having sat all night to finish the case, as was the custom at that time. On the same day, at Glasgow, a cotton spinner named Thomas Riddle, pleaded guilty to the crime of breaking into a house, and using violence to compel another workman to join the strike. Lord Cockburn, who sentenced him to seven years transportation, was at pains to explain the law for the instruction of the working classes in the west. Every man, he said, was not only allowed to demand what wages he pleased, and to refuse to work if he did not get them, but was also allowed to combine with others, and strike in order to make their demands more effectual. Workmen might combine against masters, and masters against workmen. The market of labour, like that of capital, was free. But no workman had a right to dictate to another the terms on which he was to sell his labour. "The labour of a poor man is his principal property ; and he who robs him of that makes him a beggar. Yet there are masses of people who set themselves up as the dictators of the market of labour, and have the audacity to band themselves together in defence of this tyranny. These persons not only abstain from working themselves, which the law leaves them at liberty to do—but they proclaim that nobody else shall work for less ; and, if their insolent mandate be disregarded, they enforce it by violence ; and then declare themselves the friends of free trade. How anything so iniquitous and absurd should ever enter the minds of the educated people of Scotland, has always appeared to me incomprehensible."

It was to vindicate these principles that Lord Advocate Murray brought the labour leaders in the west of Scotland to justice. "This," he had said in his speech to the jury, "is a prosecution to defend the rights of workmen, and to free them from shackles tyrannically imposed upon them under the most false and hypocritical pretence." But there were people in Scotland who could not see that tyranny is always the same, whoever the tyrants may be, and that the Lord Advocate had rendered a genuine service to labour,

and to the trades union movement all over the country, by stamping out the excesses committed by the hired bullies of the Glasgow Union. They insisted that the convicts had been unfairly treated, and sent up to Parliament petitions for a mitigation of the sentence. Brougham undertook to present them. He had never forgiven the Whigs for excluding him from the second Melbourne administration, and, though now acting in concert with the Opposition, often posed as a Radical. He told the House of Lords that the Crown Counsel in Scotland had blundered in the management of the prosecution, and made what Cockburn called "a savage attack upon Murray, the oldest and most idolatrous friend he has upon earth."<sup>1</sup>

Murray answered this onslaught a few days later, when Mr. Wakley, one of the members for Finsbury, who moved for a select committee on the constitution and practices of the Cotton Spinners' Association, not only attacked the criminal law of Scotland, the conduct of the Lord Advocate, and the sentence of the judges, but went out of his way to make the case an excuse for a general assault on the rich, whom he accused of combining to oppress and starve the poor. "There is," he cried, "a trades union in this House, where the landed proprietors combine against a law for making corn cheaper." Murray said it was hardly necessary to disclaim a wish to starve the poor. "Any man who entertained such a feeling would be unworthy to fill a station of responsibility; and if I am exposed to the taint of a suspicion of entertaining such a feeling, I ought to be removed from my station by an address of this House." Then he went on to make a spirited defence of the criminal law and procedure of Scotland against Mr. Wakley, who had said that if the law of Scotland had been correctly laid down by the judges, he considered himself fortunate in never having been in Scotland. There was, said the Lord Advocate,

<sup>1</sup> *Journal*, i. 164. Lord Cockburn speaks of "the melancholy exhibition made by Brougham, who has taken up this hopeless cause with almost incredible folly and bitterness." For Lord Brougham's speech see *Hansard*, xl. 931.

scarcely an instance of a person accustomed to hear trials in Scotland being present in an English court of criminal justice, without being surprised at verdicts returned upon evidence on which no verdict would be obtained in Scotland. He defended the sentence in the case of the cotton spinners. The accused had been found guilty of a conspiracy against freedom of labour. This conspiracy had existed for years. It had been accompanied by acts of cruelty and intimidation. In Scotland a sentence of seven years' transportation was not thought too severe a punishment for so grave a crime. "But if," he said, "the law of Scotland is wrong, let Parliament alter it; but in the meantime it must be administered, and I hope the House will support the judges of the land in the discharge of their duty."

Lord Brougham's great point had been that the trial was delayed in consequence of blunders on the part of the law officers. Murray met this by saying that Brougham's statement was "the very opposite of anything approaching to truth." The trial was delayed, he explained, simply because fresh evidence had been obtained. There were no blunders "except in the fancy of the learned Lord."<sup>1</sup> "I suppose," he said, "that if the noble and learned Lord had been aware of the reason why the trial was delayed, he would not have made such a statement in reference to a person whom he has known for forty years, and whose character, however inferior it is for talent and ability, has at least not been less distinguished for straightforward conduct and veracity than even that of the noble and learned Lord himself; but in that humble and low attribute to which all men may lay claim, I think I am not guilty of

<sup>1</sup> The prisoners were first brought up for trial on November 10, 1837. when their counsel raised objections to the relevancy of the indictment. These were repelled by the judges; but the case was not proceeded with till January (1838) because, as the Lord Advocate told the House of Commons, additional evidence had been found, and a new list of witnesses had to be prepared. The first hearing is reported in Swinton, *Justiciary Reports*, i. 550.



any remarkable presumption in saying that I consider myself his equal."

This dignified reply was received with such loud and prolonged cheering by the Commons that Brougham, who had apparently listened to the debate, thought it necessary to explain away his statements.<sup>1</sup> A few days later, when presenting fresh petitions for a mitigation of the sentence, he told the House of Lords that he had not meant to blame the Lord Advocate, whom he called "my old friend," personally when he censured the way in which the prosecution had been managed. This may have been the case; but the explanation was received with incredulity, and Lord Melbourne said that he thought Brougham's speeches were doing more harm to the working classes than could be counteracted by all his lectures on political economy.<sup>2</sup>

When Parliament met for the session of 1839, Mr. Fox Maule, now member for the Elgin district and Under-Secretary at the Home Office, brought in a Prisons bill for Scotland, by which it was proposed to transfer the management of the prisons, which were in a disgraceful state, from town magistrates to county boards, to establish three general prisons for Scotland, and to levy an assessment on the whole country for their maintenance. Murray spoke on the second reading, which was carried on the 22nd of February.<sup>3</sup> Three days later he moved the second reading of one of his own bills, which was very popular in the Parliament House, as it proposed to increase the salaries of the Scottish judges. In 1799 these salaries had been raised from £1,000 a year to £1,280. In 1810 they had gone up to £2,000; and they were now to be fixed at £3,000. The Radicals turned out in force against this proposal; but the second reading was

<sup>1</sup> "The Speaker declares that the condemnation of Henry Brougham by the Commons as being unworthy to be believed on a matter of fact or for sincerity, was so loud and unequivocal that it overwhelmed him to the extent of making him almost incapable of seeing and hearing."—*Cockburn, Journal*, i. 165.

<sup>2</sup> *Hansard*, xl. 1124.

<sup>3</sup> *Ibid.*, xlv. 815.



carried by a large majority, in spite of Mr. Hume's assertion that the judges sat, on an average, for only one hour and a half each day.<sup>1</sup> Murray's last vote in the House of Commons was in the majority of forty-five by which the motion to go into committee on this bill was carried on the 12th of April, 1839.<sup>2</sup>

He had now been forty years at the bar; and the time had come when he was to follow Jeffrey and other old political friends who had gone to the bench. There was a vacancy in the Court of Session, caused by the resignation of Lord Corehouse<sup>3</sup>; and Murray, relinquishing without regret the office of Lord Advocate, received a knighthood, became a "Senator of the College of Justice," and took his seat among the judges as Lord Murray.

Murray's defence of the criminal law of Scotland, and of his own conduct as Lord Advocate, was his principal achievement in the House of Commons. It is clear that his Parliamentary career did not fulfil the hopes of his friends, and perplexed those who had not known him in his earlier days, but had heard of his high reputation. Miss Harriet Martineau, who never met him till he was Lord Advocate, says that of all her acquaintances none was a greater puzzle than "Horner's beloved John Murray." She could not understand why a man of whom so much had been expected had done so little. He was, however, very popular in London. Miss Martineau describes him as "always happy to give pleasure," and says that he and his wife vied with each other in trying to make their guests enjoy themselves. They gave her a general invitation to their parties, and sent their carriage for her every Thursday, when they received their friends at Westminster. "They lived," she says, "in the Lord Advocate's chambers, under the same roof as the Houses of Parliament, and there, on Thur-

<sup>1</sup> *Hansard*, xlv. 875.

<sup>2</sup> *Ibid.*, xlvi. 1382. Sir William Rae, in supporting the bill, said the Lord President had been forced to drive to court in a hackney coach because he could not afford to keep a carriage.

<sup>3</sup> George Cranstoun of Corehouse.

day evenings during the session, was a long broad table spread, with a prodigious Scotch cake, iced and adorned, on a vast trencher in the middle. Members of both Houses dropped in and out, when the debates were tiresome ; and there were always a few guests like myself, who went on their way to and from other visits, and gathered up the political news of the night, curiously alternating with political anecdotes or Edinburgh jokes of thirty or forty years before. It was pleasant to see the Jeffreys come in when Sydney Smith was there, and to look on these grey-headed friends as the very men who had made such a noise in the days of my childhood, and who were venerable for what they had done and borne in those days, though they had disappointed expectations when their opportunity came at last."

Given in his youth to hospitality, it was the same when he reached the fifth age of man. His dinner parties in Edinburgh were frequent, and sumptuous after the fashions of that time ; and in the West Highlands, where he and Lady Murray usually spent the summer, they delighted in entertaining their friends. So he lived on for twenty years ; an aged Nestor of the Whigs ; performing his duties on the bench with prudence ; a useful citizen ; always to be depended on for a good speech on behalf of any public scheme of which he approved, and a generous subscription from his well-lined purse ; a genial, open-handed man to the end. He outlived almost every companion of his youth, and died at Edinburgh, in his eighty-third year, on the 7th of March, 1859. Lady Murray, who survived him, died in 1862, leaving no family.

## CHAPTER II

### ANDREW RUTHERFURD

IN the spring of 1839, when Lord Advocate Murray went on the bench, the most eminent counsel at the Scottish bar was the Solicitor-General, Mr. Andrew Rutherford.

His father was a clergyman of the Church of Scotland, the Rev. William Greenfield, son of Captain John Greenfield, R.N., who in 1747 married Miss Grizel Cockburn, daughter of Sir William Cockburn of that ilk. In 1781 William Greenfield, then a Master of Arts of Edinburgh University, was presented to the living of Wemyss, a parish in Fifeshire, from which, in the autumn of 1784, he was translated to Edinburgh, where he became the first Minister of St. Andrew's Church, which had recently been built for the new town which was then rising on the northern side of the city.<sup>1</sup> Three years later he was promoted to the High Church in the Cathedral of St. Giles', a living which he held in conjunction with the Professorship of Rhetoric in the University of Edinburgh. In both these offices he was the colleague of Dr. Hugh Blair. Blair's sermons had been famous for some years.<sup>2</sup> Dr. Johnson said he loved them, "though the dog is a Scotchman and a Presbyterian," and they were to be found, translated into foreign languages,

<sup>1</sup> It was opened on December 12, 1784: *Notes on the History of St. Andrew's Church*, 1784-1884, p. 6.

<sup>2</sup> The first volume of Blair's *Sermons*, which appeared in 1777, was published on the advice of Dr. Samuel Johnson by Strahan & Cadell of London, who had previously refused the MS.

in the bookshops of the Continent. But Robert Burns is said to have preferred the sermons of Greenfield; and there is a well-known story of how he openly proclaimed this at Blair's house, in the hearing of the doctor, to the dismay of a party of his flatterers. No man was better fitted than the author of the fifteenth stanza of the "Holy Fair" to discern the exact place in Scottish theology of the preaching which filled the High Church when Blair was in the pulpit; but whether or not Burns was a good judge of sermons Greenfield was a man of considerable note in his day. He was a Fellow of the Royal Society of Edinburgh, to which he read a learned paper which is printed in the *Transactions*.<sup>1</sup> He received the appointment of Almoner to the King. The University of Edinburgh made him a Doctor of Divinity. In May, 1796, he was Moderator of the General Assembly. In March of the following year he delivered an address on the war which was considered worthy of publication<sup>2</sup>; and when the Assembly met again in May he preached the sermon which opened the proceedings.<sup>3</sup> His name is on the "Commission" appointed, as usual, to superintend the affairs of the Church during the next twelve months.<sup>4</sup> After that little or nothing is heard of him till the 20th of December, 1798, when he wrote a letter to the presbytery of Edinburgh resigning his charge, in which he was succeeded by the Rev. James Finlayson, author of a *Life of Dr. Blair and other works*.<sup>5</sup>

<sup>1</sup> *On the Use of the Negative Quantities in the Solution of Problems by Algebraic Equations*.—*Transactions R.S.E.*, i. 131.

<sup>2</sup> *Address delivered to the Congregation of the High School of Edinburgh, on Thursday, the 9th of March, 1797, being the Day of the National Fast for the War with France*. By William Greenfield, D.D.

<sup>3</sup> *Actings and Proceedings of Assembly*, May 18, 1797.

<sup>4</sup> *Acts of Assembly*, May 27, 1797.

<sup>5</sup> *Scots Magazine*, lx. 863; Cameron Lees, *St. Giles', Edinburgh*, p. 291. The authorship of the anonymous *Essays on the Sources of the Pleasures received from Literary Composition* [London, printed for J. Johnson, St. Paul's Churchyard, by S. Hamilton, Weybridge, 1809] has been attributed to Greenfield. It is a volume of 378 pages, written in a style



In 1782 (November 22) Dr. Greenfield had married Miss Janet Bervie, the daughter of a Fifeshire family. Seven children, three sons and four daughters, were born of this marriage. In the year 1799 the family assumed the name of Rutherford. The second son, Andrew,<sup>1</sup> who was born on the 21st of June, 1791, was sent to the High School of Edinburgh, which he left as "Dux," or head boy, in 1805. He then went to the University, where he was a student in the Faculty of Arts from 1805 to 1809. His name is not in the list of graduates ; but that love of the classics which he had all through life is a proof that he studied to good purpose under Dunbar and Alexander Christison, the professors of Greek and Latin. He was just in time to attend the lectures of Dugald Stewart, who was soon to leave the chair from which, during a quarter of a century, he had been teaching Political Economy and Moral Philosophy. From 1808 to 1811 he studied law ; under Alexander Irving, afterwards Lord Newton, who was then laboriously expounding Roman law from the Institutes, the Pandects, and the Dutch textbooks ; and under David Hume, the historian's nephew, to whose lectures on the law of Scotland it may not be fanciful to trace the source of the remarkable facility which Rutherford afterwards displayed when pleading on questions which lay on the borderland between law and history.<sup>2</sup> A lectureship on Conveyancing had been instituted in 1793 ; but there was at this time no professor. Yet on no branch of law had Rutherford a firmer grasp in

resembling that of Blair's *Lectures on Rhetoric and Belles Letters*. But it is doubtful if Dr. Greenfield wrote it. The Rev. Edward Mangin of Bath has been suggested as the author.

<sup>1</sup> Possibly named after his maternal grand-uncle, Andrew Rutherford of Crosshill, a property in Fifeshire which he afterwards inherited (1810) on the death of his elder brother Captain Hugh Blair Rutherford, 25th Regiment.

<sup>2</sup> Sir Walter Scott speaks of Professor Hume as "not satisfied with presenting to his pupils a dry and undigested detail of laws in their present state, but combining the past state of our legal enactments with the present, and tracing clearly and judiciously the changes which took place, and the causes which led to them."



after life ; and probably, before going to the bar, he studied for a time, as many did, in the chambers of some Writer to the Signet.<sup>1</sup>

On the night of Tuesday, the 22nd of December, 1807, he took his seat in the Speculative Society, and found among the members Henry Home Drummond, Thomas Francis Kennedy (Lord Cockburn's correspondent), Sir George Clerk, and others who became more or less distinguished in politics, literature, and the law. He remained an active member for the next four years. The rule against political debates was still in force ; but there is no reason to doubt that Rutherford was from the first one of the Whig successors of Brougham, Murray, and Horner. The essays which he read show that history was already a favourite study ; and it may be noted that one of them was on " Church Establishments," a question with which he was to be often concerned as Lord Advocate and Member of Parliament.

He passed to the bar on the 27th of June, 1812. With influential friends behind him, and thoroughly master of his profession from the first, he immediately acquired a large junior practice. His success was so rapid that within ten years from the time he first put on his wig and gown, his future was assured ; and on the 10th of April, 1822, he was married, at Walcott Church, Bath, to Sophia Frances, daughter of Sir James Stewart of Fort Stewart, Member of Parliament for County Donegal.<sup>2</sup>

His practice occupied him so fully that he had little time to spare for politics ; but his name is on the list of Whigs who signed the requisition for the Pantheon Meeting, and in one of the skits published by the other side he figures among the Nine Muses attending on Jeffrey, who plays the part of Apollo.<sup>3</sup> He did not speak on a political platform

<sup>1</sup> The first professor of Conveyancing (appointed by the town council in 1825) was Mr. Macvey Napier, who resigned in 1829, when he succeeded Jeffrey as editor of the *Edinburgh Review*.

<sup>2</sup> He lived with his mother at 3, North Charlotte Street, till his marriage, when he settled for a time at 141, George Street.

<sup>3</sup> *Grand Exhibition of the New Heathen Mythology at the Pantheon, December the 16th, 1820, under the immediate patronage of Her Majesty Queen Caroline.*

till 1831. In October of that year Sir John Dalrymple, Sir Alexander Gibson Maitland, Sir Thomas Dick Lauder and Sir James Gibson Craig called a public meeting, in the Waterloo Rooms at Edinburgh, to protest against the rejection of the Reform Bill by the House of Lords; and on this occasion Rutherford, who was the principal speaker, moved an address to the King expressing confidence in Lord Grey, and asking his Majesty to ensure the passing of the bill "by every exercise of your royal prerogative." This was, of course, an allusion to the question of creating peers to force the bill through the House of Lords; but the line taken by Rutherford was that the Whigs had the country and the Commons behind them, and could afford to wait. "There is only one danger," he said at the end of his speech, "and that is the danger of impatience and excitement. I trust the patient virtue of this people will soon be appreciated by the House of Lords; and if they have not learned to appreciate it yet, let us show it them a little longer. Let there be no violence, no turmoil to stain the virtue of our enterprise."

After the bill for Scotland passed in July, 1832, Rutherford seems to have stood almost entirely aloof from the preparations for the general election, with which Murray and Cockburn were so busy; and, when the court rose for the summer vacation, he started with his wife on a trip to the West Highlands, after paying a short visit to relatives in Perthshire.<sup>1</sup> In a fortnight he was back in Edinburgh and immersed in work.

Even when the courts were not sitting he could not escape business. His chamber practice was enormous, and so many cases were sent to him for opinion that he was never able to clear his table. Dr. Hill Burton, the historian, has said that he was "saturated" with law. Except to refresh his memory on some minute statutory provision, he

<sup>1</sup> His second sister, Miss Grace Rutherford, married the Rev. Thomas Clark, D.D., parish minister of Methven in Perthshire. Their son, Andrew Rutherford Clark, was long afterwards Solicitor-General for Scotland, and a judge of the Court of Session.

seldom needed to look up authorities. His power of getting at the root of a case astonished those who met him in consultation; and when he was pleading in court his powers as an advocate were unsurpassed. Though his manner seemed artificial, he was a marvellously persuasive speaker. He began as if he did not care to trouble himself much, and gradually became more and more in earnest, until at last it was difficult, at least for a jury, not to be convinced that the justice of the case was on his side. Those who knew him have described his manner as imperious, haughty, almost overbearing. "The sloe-black eye, more powerful by far in its steady lustre than any eye we ever saw, the calm resolution, the perfect self-possession and self-reliance apparent in his style of speech, told you that, despite all which might be assumed or affected about him, he was no common man."<sup>1</sup> In 1837, when he had scarcely a rival at the bar, he was appointed Solicitor-General in place of Mr. John Cunninghame, who was raised to the bench as Lord Cunninghame.

Cockburn, though he regretted Rutherford's "loftiness of manner," did not think it would injure him in public life. "Of all the men at our bar," he said, "he is by far the best fitted for professional eminence and for public usefulness united. His outward appearance denotes a gentleman of good manners and strong sense. He has a remarkably large fiery eye, and a deep sonorous voice. No member of the Faculty would make so good a President, or so good a Lord Advocate."

Rutherford's first serious work as a law officer of the Crown was at the trial of the Glasgow cotton spinners. But his most important business at this time was in the Court of Session, where he was senior counsel for the defenders in the famous Auchterarder case.

It was now three years since the General Assembly passed the Veto Act. The new law had worked smoothly. In places where the people had objected to the patron's choice

<sup>1</sup> *Reminiscences of the Court of Session*, 1856,

another person had been presented, and there had been no further difficulty, except in the parish of Auchterarder in Perthshire, where in October 1834 Lord Kinnoull, the patron, had presented a Mr. Robert Young.<sup>1</sup>

On the 2nd of December the presbytery of Auchterarder met. A "call" in favour of Mr. Young, signed by Lord Kinnoull's man of business and two other persons, was laid on the table. The practice was that the presbytery, if the "presentee" accepted the call, made trial of his qualifications, and if they found him duly qualified, proceeded to ordain him and induct him to the living. In this case, however, a large majority of the heads of families declared their disapproval of the presentee; and, after various proceedings in the Church courts, the presbytery, on the 7th of July, 1835, carried out the provisions of the Veto Act, and rejected the presentee.

If Lord Kinnoull had followed the example of other patrons, he would now have made another presentation. But, instead of doing so, he raised an action in the Court of Session, in his own name and that of Mr. Young, against the presbytery of Auchterarder. In this action the judges were asked to declare that the presbytery, in refusing to make trial of Mr. Young's qualifications, had acted illegally, and were still bound to take him on trial, and admit him to the living, if they found him qualified for the ministry.<sup>2</sup>

The vital point of the defence which Rutherford had to maintain was in the first "plea in law" for the presbytery:—"By the laws of the Church of Scotland, which are also sanctioned by those of the State, all matters relating to the trial and induction of ministers are subject to the jurisdiction of the Church courts, whose sentences are final

<sup>1</sup> *Return of Presentations by Patrons to Parishes within the Church of Scotland, and of Cases in which the Veto has been exercised, between August, 1834, and April, 1840.*—Parl. Papers, 1841 (10), xx.

<sup>2</sup> Robertson, *Report of the Auchterarder Case*, Vol. I, Appendix, pp. 6–26. As originally brought into Court, the action was for the fruits of the benefice; but when the presbytery replied that they did not claim these, it was changed to the form in which it now came before the judges.



and conclusive." So far as words go, no simpler or more easily understood plea was ever put on record in any case. But no plea ever opened up a wider field of controversy, for it involved points which might raise that question of "spiritual independence" over which so many battles had been fought in Scotland between the Church and the Crown, especially during the seventeenth century. The establishment by law of the Presbyterian system, after the Revolution, had been the prelude to a long truce which lasted throughout the eighteenth century; and, though the Patronage Act of Queen Anne, with the intrusions which followed it, had disturbed and weakened the Church, the old questions of spiritual independence, and the separate jurisdictions of civil and ecclesiastical courts, had been little heard of for more than a hundred years, when, on a wintry morning in 1837, the judges drove up to the Parliament House to hear counsel in a case of disputed settlement at Auchterarder, in which the general public took very little interest.

The arguments, which were heard by a full court of thirteen judges, began on the 21st of November, and did not finish till the 12th of December. The Dean of Faculty, Mr. John Hope, who led for Lord Kinnoull, had the advantage of addressing a bench most of whom were already prejudiced in his favour. The Lord President was his father, Charles Hope, who, some years before,<sup>1</sup> had declared his opinion that the Church of Scotland possessed no inherent jurisdiction, and no rights except those which it might receive from Parliament. The majority of the court had been trained in the same school, and were ready to agree with the Dean when he argued that the Church, patronage having been instituted by statute, had no power to limit or control its exercise; that the only right possessed by the Church was the right of examining the presentee as to his general qualifications for the ministry; that the disapproval of the people was not a disqualification; that the call was a mere form which the law did not recog-

<sup>1</sup> In the General Assembly of 1826, during a debate on pluralities.



nize ; that the presbytery was bound to examine the person chosen by the patron, and to induct him, if he was qualified, however strongly the people might object ; that the Veto Act was a violation of the law ; that the Church had, therefore, acted wrongfully in passing it ; and that it inflicted a wrong on patrons which the Court of Session had jurisdiction to redress.

When Rutherford rose to answer the Dean's speech, which he rightly described as one of " much power, learning, and research," he must have felt that his chance of obtaining a favourable decision was small, though he had the consolation of knowing that the author of the Veto Act was on the bench, and beside him Jeffrey and Cockburn, who, when Lord Advocate and Solicitor-General, had given opinions in favour of it. His argument was a model of concise pleading. Hope's speech was of such length that, in the official report, it occupies one hundred and eighty-three closely printed octavo pages. Rutherford's is contained in seventy. Hope spoke for three days, Rutherford for only part of two. But he found that time sufficient for a minute examination of the statutes and decisions by which the Dean supported his case, and for a full statement of the principles on which the Church relied.

He said that he rejected the theory of a compact or alliance between the Church of Scotland and the State, and agreed with the Dean that the Church was dependent on the State. Then, in a passage which may be quoted as an example of the language he habitually used when pleading on these high constitutional questions, he said : " When I say that the Church of Scotland is dependent on the State, I do not mean to speak of the Church of Scotland in a spiritual sense, as forming part of that universal Church which consists of all the elect in every age and climate, and under all denominations,—that Church to which the promises were made, and which is assured of the guidance of the Spirit,—I speak of the Church of Scotland as a national *establishment*, possessed of privileges and immunities, endowed with property, and having an

orderly gradation of judicatories in Sessions, Presbyteries, Synods, and General Assemblies, and invested with high judicial, and not judicial only, but legislative powers." But the constitution of the Church of Scotland, thus deriving its authority from the State, was to be found not only in Acts of Parliament, but also in the Acts of Assembly, and in a body of unwritten law established by custom and immemorial use. The earliest statutes relating to the Church recognized an already existing discipline, rights of self-government, and judicial and legislative powers, which were adopted and sanctioned by the State. The call by the people, though not founded on any Act of Parliament, was always treated by the Church as an essential part of the procedure by which ministers were admitted to livings. The Church had exclusive jurisdiction in everything relating to the qualifications without which ministers could not be admitted. If, therefore, acceptability to the people was one of those qualifications, the Church must have the right of fixing the criterion of that acceptability ; and if the Church required a certain concurrence of parishioners in the call, she only pointed out the evidence on which she directed her courts to proceed. Thus the Veto Act merely laid down a rule by which the courts of the Church were to decide in the ecclesiastical matter of the call. It fixed one criterion by which they were to be guided in judging if the person presented by the patron was qualified ; and this was plainly a part of the procedure in ordinations and inductions, which belong exclusively to the Church, and which she had the sole right to regulate. The Church might have regulated this procedure, and prevented the intrusion of unacceptable ministers, either by deciding each case as it arose, or by exercising the legislative powers which the State had given. "The Church," he said, "adopted the latter course in 1834,—and in adopting it she did not exceed her powers. Whether she acted wisely or not, is not here the question ; nor is this the place to entertain such discussion. She will vindicate her own proceedings to public opinion,—she will vindicate her proceedings before the

legislature of the State if called upon to do so. But she denies she is under any necessity to defend herself in this court. And the presbytery of Auchterarder will not betray her interests or her rights, by entering into a defence, even before this high tribunal, in a matter as to which, however deep and sincere the respect she feels for your Lordships, she must disclaim its authority."

That Rutherford had spoken in vain was seen when, more than two months later, the judges met to give judgment. Lord President Hope at once struck the keynote to what followed. "My opinion," he bluntly announced, "is that the Act of the General Assembly in 1834, now before us, is illegal, and not more contrary to the statute law of the land than it is to the law of the Church itself." In any civilized country, he said, there must be some supreme court, by which all other courts were compelled to keep within their duty. In France there was the *cour de cassation*. In England the Court of Queen's Bench had issued a writ of *mandamus* to compel a bishop to admit a person as a prebendary in his cathedral. And in Scotland the Court of Session had jurisdiction over the courts of the Church, when they exceeded their powers. These powers were limited to the control of purely ecclesiastical matters. The Veto Act interfered with the valuable civil rights of patrons, given by Act of Parliament, and the Assembly had no right to pass it. As to the call by the people, it rested on very doubtful authority, and had no sanction but long usage. The Patronage Act said nothing about calls, or about approval or disapproval by the parishioners, much less about an arbitrary veto. In short the Act of 1834 "makes a direct attack on the rights of patrons, and flies in the face of the law of the land." The Court was asked to declare that the rejection of Mr. Young, without examination, and because of the people's objections alone, was illegal. "I am," he said, "most clearly of that opinion, and that we are entitled so to declare."

Seven of the judges concurred with the President, though they expressed their views in more guarded language. Of



the opinions delivered by the judges who thought otherwise, that of Jeffrey is, on the whole, the most interesting. He held that the jurisdiction of the court could not be maintained, even if it were assumed that, in relation to the general statutes of the realm, the Church had gone beyond her powers, provided she was acting within her own province, and was not assuming civil jurisdiction. No civil interest, he said, was before the court. The whole question was one of ecclesiastical procedure. The consequences of what the presbytery did might, indeed, affect the civil interests of the patron and Mr. Young ; but this indirect result of an ecclesiastical proceeding could not touch the real character of that proceeding. The civil court could not interfere with it. Only two things were under the jurisdiction of the civil court ; the right of patronage, and the right to the temporalities of the living. There was no issue before the court regarding the temporalities ; and the presbytery had not called in question the patron's right of presentation. The Church was the sole judge of the qualifications of the person chosen by the patron ; and if, in making the approval of the people one of these qualifications, the Church had fallen into error, the only remedy was an Act of Parliament. "As something," he said, alluding to the President's references to French and English practice, "has been thrown out as if this court possessed some supereminent and peculiar power of correcting, or, at least, declaring the errors or excesses of power of other independent judicatories, I think it right to say that, whatever may be the case with the Court of Cassation in France, or even with the Court of Queen's Bench in England, I am unable to discover the traces of any such prerogative or extraordinary authority in the Court of Session. In our judiciary system, I take it to be clear that no tribunal has, either on review or originally, an unlimited jurisdiction over all the rights and interests of the subject." There could hardly, he said, be any proceeding of any court which would not, in some way, affect civil interests. If a criminal court punished a man, his civil interests, and those of

his family, were injured. If the Church courts deposed a clergyman, it was the same. But in none of such cases could a remedy be claimed in the Court of Session. "The truth is," he continued, "that no system of jurisprudence can ever afford redress for occasional errors or excesses of power by supreme courts, while acting within their several departments. In the theory of the constitution, the supreme courts of the country are held to be as nearly incapable of doing wrong as the Sovereign herself, and, though known to be fallible in fact, are presumed to be so equally fallible as not to be trusted with the correction of each other's errors."

Most of the judges, however, being of a contrary opinion, the objections to the jurisdiction of the court were repelled by a majority of eight to five, and it was declared that the presbytery of Auchterarder had acted illegally in rejecting Mr. Young.

This judgment, which Lord President Hope signed on the 10th of March, 1838, merely declared that what had been done was illegal. It did not order the presbytery to take Mr. Young on trial; and it was, in point of form, nothing but the declaration of a legal opinion. But it was certain that, if the presbytery did not yield, the temporalities of the living would be lost. Accordingly, when the General Assembly met in May, it was resolved to appeal to the House of Lords, in order, if possible, to save them.<sup>1</sup> The appeal was heard in the Spring of the following year; and on the 2nd of May, 1839, Lord Chancellor Cottenham and Lord Brougham confirmed the judgment of the Court of Session.

It was shortly before this that Lord Advocate Murray went on the bench. Rutherford immediately succeeded him, both as Lord Advocate and as member for the Leith district, where he was elected, without opposition, on the 22nd of April, 1839.

The new Lord Advocate entered Parliament at a

<sup>1</sup> *Acts of Assembly*, May 24, 1838; *Memoirs of Chalmers*, iv. 95.



critical moment in the fortunes of the Whig party. His first vote was in the division on the Jamaica bill, when the Government had a bare majority of five. This virtual defeat took place during the early morning of Tuesday, the 17th of May; and in the evening the Ministers announced their resignation. Next day the Queen sent for the Duke of Wellington and Sir Robert Peel. The crisis caused by the "Bedchamber Question" followed; and in a few days the Whigs resumed office, to the great joy of the Queen, and supported, on the first trial of strength in the House of Commons, by the majority of eighteen which carried the election of Mr. Shaw Lefevre as Speaker against Mr. Goulburn, who was proposed by the Conservatives.<sup>1</sup>

"I have known all our Lord Advocates since 1793," Cockburn wrote, when Rutherford was appointed, "and there has not been one of them so well qualified, so far as we can predict, for that situation." He might fail, "for the Lord Advocateship is made a very peculiar and difficult post; but if he does, no one can succeed. Scotland can produce no such man for that position." At first Rutherford himself was evidently dissatisfied with his surroundings. He sends a letter to Edinburgh, saying that he is "in place, but without power, worried and constantly occupied, but doing and accomplishing nothing." This Cockburn tells him is nothing but the natural feeling of a man new to office; and Jeffrey urges him to give the House of Commons a touch of his quality. "My dear R.," he writes, "why the devil do you not say something in Parliament, while it is called to-day, and before the night cometh, when no man can speak? Let your mouth, then, be opened, if it were only for once, like that of Balaam's ass, and let my cudgel provoke you, if not the abundance of the heart. I glance over every newspaper, in hopes of finding your name at the top of a long column, broken with cheers;

<sup>1</sup> On the retirement of Abercromby, who was raised to the peerage as Lord Dunfermline, and succeeded as Member for Edinburgh by Macaulay, on June 4, 1839.

but there you are, mute as a fish, and only figuring in the miraculous draft of a large division.”<sup>1</sup>

On the 3rd of July, a month after this letter, Rutherford rose for the first time, and said a few words in committee on the Prisons Bill, which had passed its second reading on the 22nd of February.<sup>2</sup> Later, on the same evening he spoke on some length during the debate on the third reading of the Court of Session Bill, which he had received as a legacy from Lord Advocate Murray.<sup>3</sup> The Radical opposition to increasing the judges' salaries was as strong as ever. Mr. Gillon, Member for the Falkirk district, asserted that there were not three members of the Scottish bar who made more than £3,000 a year, and that any of them would be glad to take an appointment with £2,000. Mr. Hume called the bill a gross job. “There is not,” he said, “an honest man in Scotland who does not cry out against it.” Mr. Robert Wallace, the Member for Greenock, declared that it was a trick of every Lord Advocate to speak as if the objections to raising the judges' salaries involved an attack on their personal qualifications; but it was really an attack on the system, and when the session closed he would appeal to the people of Edinburgh and to the Chartist, and was sure he would have a show of hands in his favour.

This was Rutherford's first pitched battle with the Radicals. But, backed up by Sir William Rae, Sir George Clerk, and all the Whigs who were present, he carried the third reading by a majority of thirty in a House of seventy-two;

<sup>1</sup> *Jeffrey to Rutherford*, June 3, 1839.

<sup>2</sup> *Supra*, p. 44. This bill became (August 17, 1839) the Act 2 & 3 Vict. c. 42, which transferred the management of prisons in Scotland from municipal corporations and county authorities (a much needed reform) to a general board of directors, with local prison boards acting under them. The expense was to be met partly from the consolidated fund and partly from local assessments. In 1860 the general board was abolished by 23 & 24 Vict. c. 105, and the powers of the local boards were raised. In 1877 the local prison boards were abolished by 40 & 41 Vict. c. 53, and the control of all prisons in Scotland, thenceforth to be maintained out of Imperial funds, devolved on one of the Secretaries of State, assisted by prison commissioners.

<sup>3</sup> *Supra*, p. 45,

and the bill received the royal assent on the 29th of July, soon after the court had risen for the summer vacation.<sup>1</sup>

Meanwhile the manner in which the English judges had dealt with the Auchterarder appeal case was causing great indignation in Scotland. When the speeches of Lord Chancellor Cottenham and Lord Brougham were published, it was found that they had gone much further than the Scottish judges. The Lord Chancellor had been far more outspoken in denying that the people were entitled to a voice in the selection of their ministers. The "call" had been laughed out of court. Popular objections to the patron's choice, Lord Brougham had said, were of no more importance than a kick of the champion's horse when the King is presented to the lieges on his coronation. "Qualification" was said to be a technical word, meaning sufficiency in literature and morals; and the minister chosen by the patron might, therefore, be held fully qualified, and be forced into a parish, even though the parishioners were unanimous against him. If there was a conflict between the Church and the Court of Session, on any question which affected, however indirectly, the civil interests of a patron, the Church must obey the orders of the Court of Session, just as any inferior court must obey the orders of the court above it. One of the counsel for the appellants had hinted that the Church might not obey.<sup>2</sup> "It would be indecent," Lord Brougham said, "to suppose any such thing." The authority of the House of Lords was supreme, and would, of course, be obeyed. The Lord Chancellor refused to believe that the Church would not submit. "My Lords," he said, "I defend the General Assembly against the arguments and threats of their advocates." If the Church did not obey, then, said Lord Brougham, "I should at once make an order upon the presbytery to admit the minister, if duly qualified, and disregard the dissent of the congregation."<sup>3</sup>

<sup>1</sup> *Hansard*, xlviii. 1159-1174; 2 & 3 Vict. c. 36. The salaries were raised to: Lord President, £4,800; Lord Justice Clerk, £4,500; and the other judges £3,000.

<sup>2</sup> Sir Frederick Pollock.

<sup>3</sup> Robertson, *Supplement to the Auchterarder Case*, p. 39.

All this, Cockburn says, "irritated, and justified the people of Scotland in believing that their Church was sacrificed to English prejudices." Laymen were alarmed at finding that they were to have no voice in the selection of the clergy; clergymen were up in arms at the idea of the civil courts claiming such extensive powers; and the question became, on the popular side, largely a national one. The Scottish reformation, unlike the English, had been the work of the aristocracy, followed by the people, against the Crown. It had, at the same time, been a deeply religious movement; and these two forces, working together, had produced, as the distinguishing features of the reformed Church of Scotland, a denial of the royal supremacy in ecclesiastical affairs, and the assertion of "spiritual independence" by the Church. Sir James Mackintosh said that the peculiar theories of Berkeley were a touchstone of metaphysical sagacity, meaning by this phrase that those who were without metaphysical sagacity could not understand the theories of Berkeley. In like manner, spiritual independence is the touchstone of a capacity for understanding the history of the Scottish Church. The words "spiritual independence" expressed for Scotsmen what was, on the one hand, a part of their constitutional law, and, on the other hand, an article of their religious faith, involving, as they firmly believed, loyalty to the founder of Christianity as the only head of their Church. They believed—and for this belief thousands laid down their lives—that there were two supreme authorities, the one civil and the other spiritual. Both, they said, were based on the divine sanction; and each was to be obeyed within its own sphere. The civil magistrate was to bear rule, and to be obeyed, in civil affairs; but if he interfered with the jurisdiction of the Church in spiritual affairs, he was to be resisted to the death. This principle was embodied in the Confession of Faith drawn up by the Scottish reformers in 1560<sup>1</sup>; and

<sup>1</sup> This Confession was approved by a Convention of the Estates in 1560; but Mary Queen of Scots refused the royal sanction. It was rati-



after some years the two jurisdictions, civil and ecclesiastical, were still more carefully defined.<sup>1</sup> The real meaning of the struggle between the Scottish people and the English Government, which followed the union of the Crowns, cannot be understood unless we remember that (for most of the Covenanters at least) the question at issue was a question of faith and conscience. It is easy to find upon the surface of these events an explanation of a different kind, and to say that the people of Scotland, during the seventeenth century, were merely resisting the establishment of episcopacy in the place of presbytery; but no one who looks below the surface can fail to see that what brought the people of Scotland into such stern antagonism to the Government was the fact that to accept the Anglican system was to admit the royal supremacy, and abandon the principle that the Divine Head of the Church had given it a jurisdiction distinct from that of the civil magistrate. It was for that principle that men and women died during the period between the Restoration and the Revolution, and not merely in defence of one system of Church government against another; and now, in the eyes of Chalmers and the majorities in the General Assembly, it was not in those questions of the law of patronage about which Rutherford, Hope, and the rest of the bar had so many arguments, that the real issue lay. They, and with them thousands in Scotland, believed that to accept the judgment of the House of Lords was to acquiesce in a denial that the Church of Scotland possessed a jurisdiction distinct from that of the civil magistrate. That was what, rightly or wrongly, they believed. They had convinced themselves that the "Headship of Christ," to use their phrase, was at stake; and that made the crisis dangerous. It was that, and not abuses in the exercise of patronage, which finally brought about the catastrophe of 1843. The law of patronage was the occasion, not the cause, of the disruption.

fied by the Scottish Parliament in 1567, and contains the germ from which the Scottish ideal of an Established Church grew.

<sup>1</sup> *Headis and Conclusionis of the Policie of the Kirk*, 1578.



The judgment of the Court of Session in the Auchterarder case had been followed by a resolution of the General Assembly, which asserted the principle of spiritual independence.<sup>1</sup> That judgment, however, had gone no further than to show that the rejection of a minister under the Veto Act would imply the loss of the temporalities. Chalmers was prepared to repeal the Veto Act, and, while maintaining the principle of Non-intrusion, to put the acceptance or rejection of ministers in the hands of the Church courts. But it was now evident, after what had been said in the House of Lords, that a rejection by the Church courts would be held just as illegal as a rejection by the people, and that the judges would not only refuse to recognize the independent jurisdiction which the Church claimed, but would also enforce their own decrees by the usual penalties of the law, such as fines and imprisonments. The General Assembly, which met in May, 1839, a fortnight after the judgment of the Lords, accepted it as deciding the question of the temporalities, but re-affirmed the principle that no pastor should be intruded on a parish contrary to the will of the congregation. Chalmers afterwards admitted that it would have been no surrender of spiritual independence to rescind the Veto Act, which he said was only an expedient by which the Church hoped to carry into practice the principle of Non-intrusion; and it is certain that the wiser course would have been to withdraw from the false position in which the Church now stood. This, however, was not done; and the Act remained unrepealed.

Whether, as a point of constitutional law, the Church had or had not power to pass the Veto Act, it was now clear that the Assembly of 1834 had acted unwisely, and that Chalmers had been right in thinking that the safest course was to obtain an Act of Parliament.<sup>2</sup> It was, therefore, resolved to open communications with the Government, in the hope of finding some means by which "the privileges of the

<sup>1</sup> *Resolution anent the Independent Jurisdiction of the Church of Scotland.*—Acts of Assembly, May 23, 1838.

<sup>2</sup> *Supra*, p. 23.

National Establishment, and the harmony between Church and State, may be maintained,"<sup>1</sup> and with this object a deputation, led by Chalmers, went to London in July, 1839.

Jeffrey, who was Lord Advocate when the popular veto was proposed in 1833, had guarded himself against committing the Government to support it. But it was to a great extent in reliance on his opinion that Chalmers and his party had passed the Act of 1834; and Sir John Campbell, the Attorney-General, had, during the Edinburgh election of that year, called down blessings on the Assembly for what it had done.<sup>2</sup> Thus the Government, though not bound by the statements of the law officers, was at least partly responsible for the Veto Act and its consequences; and the deputation from the Assembly had, therefore, some reason for hoping that their negotiations in London would succeed. They could depend on Lord Advocate Rutherford to help them; and at the Home Office they had a friend in Mr. Fox Maule, the Under Secretary of State. Lord Melbourne habitually consulted him on Scottish business, to which Lord John Russell, then Home Secretary, had asked him to pay special attention. He was an ardent supporter of Chalmers, and, having the ear of the Prime Minister and the Home Secretary, might, with the advice of Rutherford, have been able to induce them to decide on some definite plan, if the Government had been stronger in Parliament. But what might have been done by Lord Grey, with the triumphant majority of 1833, was impossible for the weak and discredited Government of Lord Melbourne. The Ministers were not able to adopt a resolute policy on any question; and all they did was to promise that the state of things in Scotland would be seriously considered and that the Lord Advocate would be instructed to prepare a bill to be submitted to the Cabinet.

After Parliament rose Lord John Russell, who now became Secretary of State for the Colonies, asked Mr. Fox Maule if

<sup>1</sup> *Acts of Assembly*, May 22, 1839.

<sup>2</sup> *Supra*, p. 24.

he would go with him to the Colonial Office. Mr. Maule declined, chiefly on the ground of unwillingness to sever his connexion with Scottish business.<sup>1</sup> Thus Rutherford continued to have a colleague at the Home Office who understood the affairs of Scotland, and was ready to assist him in trying to prevent, as far as possible, that total neglect of their interests, on the part of the Cabinet, of which the Scottish Members were now constantly complaining.

The bill which the Lord Advocate was to prepare was expected to provide some remedy, perhaps on the lines of the Veto Act, for the grievances, arising from the law of patronage, of which the Church complained. It is doubtful whether, at any stage of the controversy, Rutherford contemplated a measure which might settle the larger question of the rival jurisdictions of the civil and ecclesiastical courts. But that question came rapidly to the front. Already, before the negotiations in London, cases had been taken to the Court of Session, as if to discover how far the judges would go in asserting their authority. In one parish a minister was rejected. The patron presented another person. The people accepted him, and the presbytery was about to induct him, when the rejected minister obtained an order from the Court of Session forbidding them to do so. But the Church intimated that no claim was made to the fruits of the living; and the presbytery carried out the ordination in defiance of the judges. For this they were summoned to the bar of the court, severely rebuked, and told that in future, if the orders of the court were not obeyed, offenders would be sent to prison. Seven ministers who had been suspended by the General Assembly went to the court, where a decree was issued forbidding any other clergymen to preach in their churches. The Assembly sent down ministers, who, finding the churches closed, preached in the open air. The court forthwith forbade them to preach in any part of the seven parishes. This injunction was disregarded. Minister after minister went down to the country,

<sup>1</sup> *Panmure Papers*, i. 12.

received an order from the court, put it in his pocket, and disobeyed it. Though the judges had said they would punish any minister who did not obey, this remained a mere threat ; and the clergy continued to carry out the directions of their ecclesiastical superiors, and set the civil court at defiance.

There was thus an acute collision of jurisdictions ; and the conflict deepened till in case after case judgment went forth against the party of Chalmers so invariably, and expressed in such language, that it seemed as if the majority on the bench were partisans and not judges.<sup>1</sup> From the courts of law the feud spread over Scotland. There were many on both sides who lost all sense of fairness. "Non-intrusionists" spoke of "Moderates" as if they were outside the pale of Christianity, while Chalmers and his friends were absurdly called "rebels" and "demagogues." The controversy invaded every parish, every town, every hamlet. Many homes were divided in opinion. Husbands and wives took opposite sides. Brothers and sisters quarrelled. Political distinctions were obliterated ; and Whigs, Tories, and Radicals spoke from the same platforms on one side or the other.

Most of the newspapers supported the Moderate party ; but the other side established a paper of their own, and found an editor of boundless zeal, and great talent as a journalist.<sup>2</sup> Numberless pamphlets were written. Of these the longest was compiled by the Dean of Faculty, who, his ardent spirit roused by filial piety and party feeling, expounded his father's opinions and his own in two hundred and ninety pages, and was answered by Chalmers and several of his followers. "The Dean is fearfully long," Mr. Glad-

<sup>1</sup> President Hope accused the clergy of "fraudulent manœuvring," and another judge said they had broken their allegiance and committed perjury.—Cockburn, *Journal*, i. 253.

<sup>2</sup> The first number of the *Witness* came out on January 15, 1840. Hugh Miller's *Letter from One of the Scottish People to the Rt. Hon. Lord Brougham and Vaux, on the Opinions expressed by his Lordship in the Auchterarder Case*, attracted the attention of the Non-intrusion party, and led to his appointment as editor.



stone, then busy with his own works on the question of Church and State, wrote to Sir James Graham, "and concludes and re-commences, which is provoking, ten or twelve times. I am now upon Dunlop's answer to him, which, professing brevity, approaches two hundred pages,—a laborious but able document, certainly showing that, if the postulates of Presbyterianism be granted, the right is not all on our side."<sup>1</sup> While the leaders were thus speaking and writing, the rank and file came to blows, and there was rioting, trifling indeed, yet causing the intervention of the police; but when the Ministers in London were pressed to make up their minds, and deal seriously with a question which was disturbing the peace of Scotland, their invariable answer was that the Lord Advocate was responsible for seeing that order was maintained.

The Government drifted along, doing nothing, till February (1840), when two deputies from the Church were sent to London, where they saw Lord Melbourne and Lord John Russell. The Prime Minister did not pretend to understand the Scottish Church question. He was "practically ignorant of it," he once told Lord Dunfermline.<sup>2</sup> He considered both parties were "too heated and eager," and evidently thought that a little cold water would do no harm. "The law is against you," he said. They answered that the decisions of the civil court did not prove that the Church was wrong any more than the decisions of the Court of Queen's Bench proved that the House of Commons was wrong.<sup>3</sup>

<sup>1</sup> *An Answer to the Dean of Faculty's Letter to the Lord Chancellor*, by A. Dunlop, Esqr., Advocate. Mr. Dunlop was afterwards well known as Mr. Murray Dunlop, M.P. for Greenock from 1852 to 1865. Dr. Chalmers, in his answer to the Dean, whose earnestness he admired, says, "It is a comfort, a great comfort, when the spirit of the times is so fast and so fearfully vulgarizing, to fall into the hands of a gentleman and man of honour. The Dean of Faculty is a Chevalier. He is not a Roundhead."—*Remarks on the Present Position of the Church*, p. 5. Mr. Gladstone's letter is in Mr. C. S. Parker's *Life of Sir James Graham*, i. 374.

<sup>2</sup> *Melbourne Papers*, 289.

<sup>3</sup> The conflict between the House of Commons and the Court of Queen's Bench, on the question of privilege raised by the case of *Stockdale v. Hansard*, was just then at a critical point.



"Yes, I see," replied Melbourne. "Questions of jurisdiction. You stand upon your spiritual jurisdiction. Eh! Isn't that it?" He laughed heartily.<sup>1</sup> This conversation was on the 19th of February. Next day they saw Lord John Russell, and found him more serious. He admitted that an Act of Parliament was necessary, and promised a definite answer by the middle of March.

During these interviews it became known that Lord Mansfield was dead.<sup>2</sup> His son, Viscount Stormont, who had been Member for Perthshire since 1837, now went to the Upper House. On Friday, the 21st of February, only three days after the death, Mr. Fox Maule moved for a new writ. The motion was opposed by Sir James Graham, who said it was unheard of to proceed so quickly, even before the late peer's funeral, and when there was no evidence that his son had received a writ of summons to the other House. The Lord Advocate replied that, by the law of Scotland, Lord Stormont was now a peer, and could not, under the Treaty of Union, sit in the House of Commons. There was, therefore, a vacancy in Perthshire, and the writ should issue. This seems to have satisfied the House; the motion was carried; and a by-election of unusual interest followed.

Mr. Campbell of Monzie, whose property was in the district of Auchterarder, was a Conservative supporter of the Non-intrusion party; and he persuaded his friend Mr. Henry Home Drummond of Blair Drummond, to contest the county as a Non-intrusion candidate.<sup>3</sup>

At the hustings Mr. Campbell said that the Conservative candidate was in favour of a law by which "the power of

<sup>1</sup> Buchanan, *Ten Years' Conflict* (Ed. 1852), ii. 63. Dr. Buchanan and Mr. Dunlop were the two deputies. Dr. Buchanan's frankly partisan work is valuable as a record of transactions in which the author took part.

<sup>2</sup> The 3rd Earl of Mansfield died at Leamington on Tuesday, February 18, 1840.

<sup>3</sup> Mr. Home Drummond was a grandson of the well-known Scottish jurist Henry Home, Lord Kames, who, writing in 1759, defined the jurisdictions of the civil and ecclesiastical courts in Scotland very much as Lord Jeffrey did in the Auchterarder case, and was often quoted by the Non-intrusion party as an authority in their favour. Kames, *Historical Law Tracts*, vii.

the patrons and civil courts should cease so soon as the presentee was handed over to the Church courts ; ” and this seems to have satisfied Chalmers. The Whig candidate, Sir George Drummond Stewart, also stood as a Non-intrusionist ; but he went further than his opponent, and said that the Veto Act, pure and simple, should be embodied in an Act of Parliament. Both candidates were thus fighting under the Non-intrusion flag ; the difference between them being that, while both recognized the independent jurisdiction of the Church, the Whig was for giving the veto to the congregations, while the Conservative was for giving it to the ecclesiastical courts.

At the Carlton the party wire-pullers watched to see how the game went in the north. Mr. Home Drummond was defending the seat. If he kept it, Non-intrusion was evidently a safe card to play in Scotland. If he increased the Conservative majority, it was evidently a strong card. At the Reform the Whig wire-pullers were equally on the alert. If Sir George Stewart won, it would be the gain of a seat ; and this would show that to support the popular veto was the way to win votes in Scotland. But if he lost—why should the Government trouble about the Church of Scotland ? On the 9th of March, Mr. Home Drummond was elected by 358 votes, which was an increase of 242 over the Conservative majority of 1837.

Lord John Russell had said that the Ministers would announce their intentions by the middle of March. But the middle of March passed, and they gave no sign. “ I should not wonder,” Sir William Rae wrote to Chalmers, “ if it were to end in their declaring that they meant to do nothing.” The result of the Perthshire election, he thought, and “ the little real influence which the more violent Church party are proved to possess,” would influence their decision. This was on the 25th of March. Next day the Lord Advocate held a meeting of the Liberal Members for Scotland. He was in a very awkward position—responsible for the maintenance of law and order in Scotland, where the injunctions of the supreme civil court were openly defied by many

clergymen of the Established Church. Hitherto he had declined to set the law in motion ; but at any moment he might be compelled to take proceedings against men who were so highly esteemed that grave disorders would certainly follow any attempt to inflict legal penalties upon them. He and Mr. Maule had explained the situation to Lord John Russell, who was waiting to hear what the Scottish Members had to say. The result of the meeting was that the Lord Advocate was requested to inform the Secretary of State that a bill dealing with the Scottish Church question should be brought into Parliament at once. It was also suggested that, when this had been done the Government should not proceed further till after the next General Assembly, so as to obtain the opinion of the Church upon the measure.

That afternoon, while Rutherford was consulting the Scottish Members, Dr. Buchanan and Mr. Dunlop, who were again in London, had gone to see Lord John Russell. He had not intended to receive them till he heard what had passed at the meeting ; but the Lord Advocate was detained so long that the interview took place before he arrived. The Ministers, Lord John said, thought they could devise a measure which would satisfy the Church ; but they had come to the conclusion that it would be impossible to carry it through Parliament, and had, therefore, resolved to do nothing. When the danger of allowing the conflict between the civil and ecclesiastical courts to continue, without even attempting to end it, was pointed out, he looked "anxious and perplexed," but only repeated that, in the meantime, the Government could not act.

Dr. Buchanan and Mr. Dunlop then went away, and had just reached their hotel when the Lord Advocate came to them. He had seen Lord John since they left him, and had come to tell them that, having heard what the Scottish Members thought, he was prepared to re-consider his answer. There was another interview next day, when the matter was discussed with Lord John, Sir George Grey,<sup>1</sup> and the

<sup>1</sup> Grandfather of Sir Edward Grey, and at that time Judge Advocate General.

Lord Advocate. In the end the deputies received a promise that their views would be laid before the Cabinet, and that a final answer would be given in a few days.

Rutherford had prepared a bill, which the meeting of Scottish Members had approved. But the dissenters did not wish to help the Church of Scotland out of its difficulties. They disliked the Veto Act, and had accused Chalmers of a design to strengthen the Established Church at their expense. That had been, in point of fact, the result of the Veto Act, which Chalmers himself described as "a powerful instrument, by which to reclaim dissenters, and bring them again within the limits of the Church." If not deliberately meant to weaken them, it was having that effect; and the Lord Advocate's bill, which would have virtually legalized the Veto Act, was to meet with so much opposition from the dissenters that the Government was afraid to bring it forward. At the end of the month there was a last interview, when Lord John gave his answer. There was to be no bill. "So this," Buchanan writes, "is the end of all our dealings with a Government which has kept us waiting eight months to tell us they will do nothing."<sup>1</sup>

Then the Church leaders turned to the Opposition. For a long time Chalmers had been looking in that direction. A majority—more than three-fourths—of his followers were Conservatives.<sup>2</sup> A Conservative himself, he naturally trusted his own party rather than the Whigs, and had all along been in communication with its leaders. Sir Robert Peel had hitherto been far too cautious to give any opinion. The Duke of Wellington had said that every care should

<sup>1</sup> To Chalmers, March 30, 1840; *Memoirs of Chalmers*, iv. 152.

<sup>2</sup> "On the spoliation of the Irish Establishment; on the topic of an entire and unmutilated Bible in every National School; on the control and guardianship of the Church over our seminaries of learning; on the vast importance, to the best interests of society, of maintaining or rather extending the ecclesiastical endowments of other days; on these, and all other kindred topics, we have fought, side by side, with the Churchmen and Conservatives of England. And it is not from a love of change, but for the objects of stability and conservation that we have given effect to our good old constitutional principle of Non-intrusion."—Chalmers, *Remarks on the Present Position of the Church of Scotland*, p. 111.



be taken to preserve "the exclusive spiritual power" of the Church, that the Church should draw up a plan to adjust its relations with the State, and that an Act of Parliament should be passed to give that plan the force of law. This would settle what the constitution of the Church of Scotland really was. Sir William Rae Chalmers found "friendly to our object," and prepared to go as far as Mr. Home Drummond had gone. To Sir James Graham Chalmers had written in June, 1839, hoping to enlist him on the Non-intrusion side; but he had already formed an adverse opinion by that time.<sup>1</sup>

But it was on Lord Aberdeen that the leaders of the Church chiefly relied. When the negotiations with the Government broke down, he made known his intention to bring in a bill himself. A long correspondence had led Chalmers to believe that he had a firm ally in Lord Aberdeen, and that his bill would satisfy the Non-intrusion party. He brought it in on the 5th of May, 1840.<sup>2</sup> It gave the people power to lodge objections to the minister presented by the patron; but reasons were to be stated, and the presbytery was to decide whether they were sufficient to warrant a rejection. The mere dissent of the congregation was, therefore, not to be in itself a disqualification; and it might still happen that a minister would be forced into a living against the will of the parishioners. There was to be an appeal against the decision of the presbytery, "which appeal shall lie exclusively to the superior ecclesiastical courts, according to the forms and government of the Church of Scotland, as by law established." This sounded well, but obviously, if the presbytery rejected a minister merely because the congregation objected to him, the civil court might interfere. Thus neither the fundamental principle of Non-intrusion, nor the exclusive jurisdiction of the Church, was secured. Chalmers was bitterly disappointed; and he soon found that he would have been safer

<sup>1</sup> Mr. Parker's *Sir James Graham*, i. 373-377, throws some light on Sir James Graham's sentiments at this stage of the controversy.

<sup>2</sup> *Hansard*, liii. 1210.

in the hands of other members of the Conservative party.<sup>1</sup>

The General Assembly, which met soon after the bill was introduced, resolved to oppose it. Lord Aberdeen, who was now, one letter says, "very obstinate and very angry," went on till the committee stage was completed.<sup>2</sup> "Lord Aberdeen," Dr. Candlish writes to Dunlop on the 2nd of July, "got his bill through the committee to-night, fairly jostling and juggling our friend Breadalbane, who, though abundantly hearty, is not very ready, and is rather overborne in that den."<sup>3</sup> Soon afterwards, however, the bill was withdrawn, and Lord Aberdeen became a bitter enemy of the Non-intrusionists, some of whom suspected him of duplicity, and accused him in print of "equivocation" and "wily diplomacy." These wild charges were made in the heat of a painful controversy; but it may be that he had become bewildered in the labyrinth of these ecclesiastical polemics, which were almost as intricate as the mazes through which, in later years, he wandered on into the Crimean war. What, most of all, made him unpopular was his speech on the second reading of his bill, when he practically said that Chalmers was unscrupulous and dishonest. He afterwards published letters which were said to have been confidential; and for this he was taken to task (rather too severely) by Mr. Dunlop, who accused him of trying to injure Chalmers in revenge for the failure of his bill, and contrasted his petulance with the magnanimity of the great Churchman, who at the very time when Lord Aberdeen was maligning him in the House of Lords had been writing a letter in which

<sup>1</sup> "I had a conversation to-day with Sir George Clerk, who intends (first privately) to urge Lord Aberdeen to come frankly into our views, and, failing that, the purpose is to hold a meeting of Scotch Conservative Members, with a view of bringing their joint influence to bear on his Lordship."—John Hamilton to Chalmers, May 14, 1840. Mr. Hamilton was a member of the Scottish bar, and a frequent adviser of Chalmers. In politics he was a strong Conservative.

<sup>2</sup> *Hansard*, iv. 364.

<sup>3</sup> The 2nd Marquess of Breadalbane, who had, when Lord Ormelie, been Whig Member for Perthshire from 1832 to 1834.

he refused to believe that there was anything but an unfortunate misunderstanding.<sup>1</sup>

Meanwhile Lord Advocate Rutherford had come to the front as a Parliamentary speaker, when he replied to Sir Edward Sugden in one of the debates on the Stockdale case, though *Hansard* gives little more than a bare outline of what he said.<sup>2</sup> At the end of July he crossed swords with the leader of the Opposition in committee of supply, on a vote for £5,000 to build a new hall for the General Assembly. Hitherto Sir Robert Peel had not committed himself on the Scottish Church question. He now said that he was sorry Lord Aberdeen's bill had not passed, and regretted that the Church of Scotland had placed itself in opposition to the State "on a question of civil right," and was not setting an example of obedience to the law. The authority claimed by the Church was, in his opinion, illegal; and he would not, even for the sake of conciliation, support it.

No member of the Cabinet spoke; but Mr. Fox Maule and the Lord Advocate rose, one after the other, to defend the Church. Rutherford said the Church had never denied the authority of the civil court on any question of civil right, and tried to explain the Scottish law as to the distinction between civil and spiritual jurisdiction. Here, he said, "comes the pinch of the question: Shall the civil court have the power of compelling the presbytery to receive into orders any person who may be offered to them? The conduct of the clergy cannot be considered so reprehensible as it is described, when you bear in mind that their view is sanctioned by an able minority of the judges, and by a

<sup>1</sup> *A Letter to the Earl of Aberdeen on the Correspondence recently published by his Lordship*, by Alexander Dunlop, Esq., 1840. Lord Stanmore, in a memoir of his father (*The Earl of Aberdeen*, Prime Minister Series), having revived this dispute, the letters were reprinted by Dr. Chalmers' granddaughter in 1893, to refute charges of "deceit," though "without any intention," and "temporising," brought by Lord Stanmore. *The Correspondence between Dr. Chalmers and the Earl of Aberdeen in the years 1839 and 1840*, Edinburgh, 1893.

<sup>2</sup> "From an inability to hear the noble Lord (*sic*) our report is but a sketch of a speech which was much and repeatedly cheered by the House," —*Hansard*, lii. 25.

large portion of the legal profession. I believe that no measure will give satisfaction, or relieve the political disorder, which I deeply deplore, that does not give popular control. Lord Aberdeen's bill did the reverse of this. It gave the Church the power which the people had been taught to expect ever since the reformation." <sup>1</sup>

It was on the 27th of July that Sir Robert Peel thus made plain his attitude to the Church. A few days later the royal assent was given to a useful bill which Rutherford had carried, the object of which, he told the House of Commons, was to introduce into the law of Scotland "those rules of evidence which for centuries have worked so well in England." <sup>2</sup> In Scotland before witnesses gave evidence they were asked whether they had been told what to say, whether they had received, or had been promised, a reward for their testimony, and whether they had any prejudice against either of the parties to the cause. This "examination *in initialibus*," as it was called, had come to be in most cases a mere farce, and Rutherford proposed to abolish it. Any witness who had been in court during the examination of another witness was disqualified. This rule was to be modified, and also another rule by which the party against whom a witness had been called could only cross-examine, and could not examine in chief. Witnesses could not give evidence for their relatives by blood, or for those with whom they were connected by affinity. This objection to witnesses on the ground of relationship seemed extraordinary to English lawyers, who could hardly believe that the Lord Advocate had stated the law of Scotland correctly. Not only, however, was it the law of Scotland, but Dean of Faculty Hope induced the Scottish bar to pass a resolution against changing it, and Sir William Rae persuaded Lord Haddington to support this resolution in the House of Lords. The bill, nevertheless, passed both Houses without any serious opposition, and received the royal assent on the 7th of August, 1840. <sup>3</sup>

<sup>1</sup> *Hansard*, lv. 1065.

<sup>2</sup> *Ibid.*, liii. 256.

<sup>3</sup> 3 & 4 Vict. c. 59. Lord Cockburn calls the objection to witnesses on



Six months after this, in January, 1841, Rutherford made a speech at Leith on the Church question. It was at a dinner given him by his supporters, when his health was proposed by the chairman in the "pawky" style which suits a Scottish audience. It was a great thing for them, he said, to have a friend at court, and so long as they wanted to get anything out of the people up in London, he hoped they would always have the Lord Advocate as their Member. This was received with much laughter, the reporter says; and the toast was drunk with "nine times nine, and tremendous cheering." Then Rutherford explained his position, and how he meant to act if the political disorders, which he had deplored in the House of Commons, grew worse. He declared himself a member of the Established Church. "But," he said, "because I am a friend to the Church of Scotland, am I less a friend to civil and religious liberty? While I am attached to the Church, I am in all things a reformer of the Church. But because I am a reformer in the Church, am I less a reformer in the State, am I less a good Whig than I was before?" At this there was more "tremendous cheering." Then he went on to say that patronage had always been a grievance. "There is not one thing in all this broad land which runs so deep, so intense as the feeling against patronage"—but there must be no violence. "I will support," he said, "no reform in the Church that cannot be accomplished in a legal and constitutional way, either by application to Parliament, or by the exercise of those spiritual powers which are inherent in the Church, and ratified to her by the State, in the Revolution Settlement, the Act of Security, and the Treaty of Union, and which are no more to be touched than the system of government at present subsisting in these realms. At the same time, these powers may be outstepped. If so, then both in my public and private character, I will refuse my support to them."

the ground of relationship "an utter scandal," and says that no English lawyer in either House could be made to say a word in its favour. *Journal*, August 24, 1840.

A warning of this kind was needed ; for the central Government in London was losing its hold on the country, and it was certain that before long there must be another general election, which would take place at a time when Scotland was in a state of dangerous excitement.

The last attempt to settle the Church question by Act of Parliament during the Whig administration, was made by the Duke of Argyll, who brought in a bill almost identical with the Veto Act.<sup>1</sup> It was opposed by Lord Aberdeen, but supported by Lord Breadalbane and Lord Rosebery, who, though not himself a member of the Church, was always on the side of the Non-intrusionists. The General Assembly declared in favour of it <sup>2</sup> ; but it never reached a second reading. On the 19th of May, the day before the Assembly met, the Government was defeated by a majority of thirty-six on an amendment to the budget.<sup>3</sup> When the Commons met next day it was found, to the surprise of both parties, that the Ministers had neither resigned, nor advised a dissolution.<sup>4</sup> But the end came in the early morning hours of the 5th of June, when Sir Robert Peel's vote of want of confidence was carried by a majority of one.<sup>5</sup> Parliament was dissolved before the end of the month ; and the country plunged into that memorable general election, when, for the last time, the old Conservative party marched forth to battle with undivided forces.

The Ministers went to the country hoping that their policy of a fixed duty would carry the day against the sliding scale, and that, whatever happened in the counties, the promise of cheaper bread would win the great towns. The people certainly wanted cheaper bread ; but in the English towns the Government barely held its own by a small margin, while in the counties protection, the chief battle-cry of the Opposition, swept the boards so thoroughly that from the

<sup>1</sup> Hansard lvii. 1478.

<sup>2</sup> *Acts of Assembly*, May 26, 1841.

<sup>3</sup> *Hansard*, lviii. 667.

<sup>4</sup> For the divisions in the Cabinet on the question of resigning or dissolving, see *Letters of Queen Victoria*, May, 1841.

<sup>5</sup> *Hansard*, lviii. 1241.

whole of rural England only twenty Liberals were returned. The Conservative majority in Wales was increased by one seat <sup>1</sup>; and in Ireland, though the Government secured a majority of the elections, the Opposition made a gain of eleven.

In England bad harvests, with population rising and wages falling, told against the Ministry. But in Scotland the electors could not be persuaded that Lord Melbourne and his colleagues were responsible for the weather or the birthrate, and that wages would be increased by turning them out. Nor was the cry of protection, so powerful in the English counties, of much avail in Scotland, where, even among landowners and farmers, the tide was already turning in favour of free trade. So, in the midst of the Ministerial *débâcle*, Scotland remained almost as Liberal as ever, the Opposition making a gain of only two seats.

Lecturers had been sent to Scotland soon after the formation of the Anti-Corn Law League; and their speeches in favour of the total abolition of the duties on food, listened to in the sober fashion habitual to the Scottish electors, had made a great impression in the places they visited. But except on this question of food taxes, the teaching of the Manchester School was never popular in Scotland, where few of the people had any sympathy with the doctrine of peace at almost any price, or with proposals for loosening the connexion with the Colonies, to which so many of their kinsfolk had gone, and where they were so greatly prospering. The public opinion of Scotland had not changed since the Reform Act; but most of the Liberals, even those who had made up their minds in favour of free trade, enjoyed some verses on the Manchester School which appeared in *Blackwood*, where Samuel Warren's "Ten Thousand a Year," perhaps the wittiest tale, and that is saying much, which was ever written for the famous monthly, was at that time ridiculing extreme radicalism and the "Bill for Giving Everybody Everything":—

<sup>1</sup> In 1832 there had been a small Liberal majority; but from 1835 till 1865 Wales was Conservative.

“Trust not the Tories for sense and sincerity,  
All about nothing they make such a fuss ;  
Leave them to prate of colonial prosperity,  
What are the East or West Indies to us ?  
Our free trade opinions are true thick and thin ones ;  
Of all our dominions we'll make a clean sweep ;  
No good to be had of them, France will be glad of them,  
Sell her both commerce and colonies cheap.”<sup>1</sup>

The local question of the Church gave both parties trouble ; and they came off best who took a bold line, and did not try to fence. On the 30th of June, Rutherford was again elected for Leith, without opposition. Four other town constituencies were uncontested, the Ayr, Inverness, and Montrose districts, and Edinburgh, where Macaulay, suspected of “Erastianism” and weakness on the corn law question, was threatened with opposition, which came to nothing, by the Non-intrusionists and the Anti-Corn-Law League. In Buteshire, Sir William Rae, despite his sympathy with Chalmers, had to fight another Conservative, an out-and-out Non-intrusionist, whose address was an “appeal to the Christian electors” ; but Rae won easily. At Glasgow and Dundee, and in the Kirkcaldy district ; Whigs and Radicals fought it out among themselves ; Glasgow returning two Radicals, both against patronage but both against Chalmers and his party, as were also the Members returned for the Wick, Haddington, and Kilmarnock districts. At Paisley a Chartist stood, but failed to obtain a single vote against his Liberal opponent. In the Falkirk district, the Radical, Mr. Gillon, lost his seat to the Conservative candidate, Mr. Baird, who also professed himself a supporter of the Non-intrusion party. For the Stirling district Lord Dalmeny was returned against the Radical, Mr. James Aytoun. There was no contest in Midlothian, where Mr. Ramsay of Barnton, the Conservative candidate, had come forward in support of protection and Non-intrusion. This was the gain of a seat to the Opposition. Campbell of Monzie carried his Non-intrusion colours into

<sup>1</sup> *Blackwood's Magazine*, July, 1841.



the county of Argyll, of which he became Conservative Member without a contest. Mr. Home Drummond was left unmolested in Perthshire; and in the city of Perth Mr. Fox Maule was successful, but not without having to fight for his seat. A contest had been expected in Aberdeenshire. About a month before the dissolution, during a last debate on the state of Scotland, Lord Aberdeen had told the House of Lords that the Church of Scotland was as tyrannical as the Church of Rome, and urged the Government to instruct the Lord Advocate to proceed against the General Assembly. This increased the enmity already felt against him, and an attempt was made to find a candidate to oppose his brother, Captain Gordon, the sitting Member. But no one would stand against him; and he kept his seat.<sup>1</sup> In twenty-two counties, returning fifteen Conservatives and seven Liberals, there were no contests; and from the whole of Scotland, thirty-one Whigs and Radicals were sent to Parliament against twenty-two Conservatives of various shades. But the result of the elections over the rest of the United Kingdom was a solid Conservative majority, which enabled Sir Robert Peel to meet the new House of Commons at the head of a party nearly one hundred stronger than the other side; a triumph which was duly celebrated in verse:—

“Good-bye to the Whigs! their dominion is o’er,  
By force or by fraud they can rule us no more.  
They may wriggle and writhe, but the struggle is vain,  
And long years will roll on ere they rally again,  
For in spite of some squealling from Pat and his pigs,  
The Country has said it—‘Good-bye to the Whigs!’”

Parliament met on the 19th of August; and on the evening of the 30th, amendments to the address having been carried in both Houses some days before, the Ministers announced their resignation.

<sup>1</sup> Captain, afterwards Admiral, the Hon. William Gordon was Conservative member for Aberdeenshire from 1820 to 1854, when he retired, and was succeeded by his nephew Lord Haddo, who sat as a Liberal till 1860, when he became the 5th Earl of Aberdeen.

Two Scotsmen were prominent in Sir Robert Peel's new Cabinet. Lord Aberdeen was Foreign Secretary; and Sir James Graham, whose political wanderings had brought him, for the time being, to the small constituency of Dorchester, was at the Home Office.

Rutherford's successor was Sir William Rae, whose present term of office lasted till his death in October, 1842, when he was succeeded by Duncan McNeill, afterwards Lord Colonsay. On seeking re-election as Lord Advocate, Sir William Rae raised the hopes of the Church party by predicting that the new Government would settle their troubles by a measure even more liberal than the Duke of Argyll's bill; but in this he was mistaken, the ruling spirits in the Cabinet having decided otherwise.<sup>1</sup>

Lord President Hope was now approaching eighty. He had been on the bench for thirty-seven years, and head of the court for thirty; but if the Melbourne Government had not fallen he would undoubtedly have thought it his duty to remain in harness for the rest of his life, rather than allow a Whig Lord Advocate to take his place. But the change of Government enabled him to retire with a clear conscience into private life, and also to do a good stroke of business for his son. He resigned. Lord Justice Clerk Boyle was appointed Lord President; and John Hope, the Dean of Faculty, succeeded Boyle in the chair of the Second Division of the court, where he presided for the next seventeen years.

Outside the Parliament House it was expected that Rutherford would now be elected Dean of Faculty. On the elevation of Boyle he made a speech which pleased the bar, and gratified the new President's family.<sup>2</sup> But he

<sup>1</sup> For Sir William Rae's first term of office, from 1819 to 1830, see *The Lord Advocates of Scotland*, etc. (1883), vol. ii, pp. 256-298. Scotland was not so numerously represented in the Peel administration as it had been in that of Lord Melbourne. The Duke of Buccleuch, however, was Lord Privy Seal and Lord Haddington First Lord of the Admiralty, both with seats in the Cabinet. Captain Gordon was a Lord of the Admiralty; and Mr. Alexander Pringle of Whytbank, Member for Selkirkshire, one of the Lords of the Treasury.

<sup>2</sup> "When in 1841 my father became Lord Justice General (a distinction

had never courted popularity, and, with all his great qualities, was respected rather than liked, except by his personal friends. With his intimates he was a charming companion ; but he mixed little in the social life of his profession beyond a chosen circle. This had apparently given offence. Perhaps, too, politics, or the strong line he had taken in the Church question, estranged the bar ; and, whatever the reason may have been, the baton of the Dean was given to Patrick Robertson, Sir Walter Scott's " facetious Peter," the huge, fat Yorick of the bar, whose jokes set the Parliament House in a roar, the best jury speaker of his day, and lately the leading counsel for the Moderate party in many of the Church cases.<sup>1</sup>

Out of office Rutherford had greater freedom in the House of Commons than when he was Lord Advocate, and was, in company with Mr. Fox Maule, the chief spokesman for the Church on the left hand of the Speaker. On the Government benches there was a new recruit, Campbell of Monzie, now Member for Argyllshire. Sir Robert Peel had asked him to take office as a junior Lord of the Treasury ; but he declined, in order to remain independent on the Church question, and was a conspicuous figure during the debates of the session which began in February, 1842.

Soon after Parliament met Peel declined to say whether the Government intended to take up the Scottish question.<sup>2</sup> It has repeatedly been said that he was biassed against Chalmers by the importunities of John Hope, who is described as an evil spirit who led the English Ministers astray. But his influence was not so strong as the leaders of the Non-intrusion party supposed. "The extreme

which would have been Rutherford's had President Hope retired during the life of Lord Melbourne's Ministry) Rutherford, to the delight of all my father's friends, proposed a resolution at a meeting of the bar in touching and eloquent terms."—*Recollections of Dean Boyle*, p. 25.

<sup>1</sup> Robertson was specially witty at dinners, when the bottles had gone the "five or six rounds" recommended by Scott. He took a leading part in the famous revels of the Edinburgh Theatrical Fund dinner of February 23, 1827, at which Scott admitted the authorship of the Waverley novels. Made a judge in 1843, he died suddenly in 1855.

<sup>2</sup> *Hansard*, lx, 103,

opinions of Hope on one side of the Church question," Peel wrote to Graham in October, 1841, "and the intemperance with which he urged them, long since shook my confidence in his judgment." Chalmers had a more subtle foe in Lord Aberdeen, and also in Sir James Graham, who told Peel that the Non-intrusion party were "evidently acting in bad faith, and organizing resistance to the law, while they seek to gain importance by 'negotiating,' as they call it, with the Government." The policy of the new Government was, therefore, to treat Chalmers and his party as men who were not to be trusted, and to avoid negotiations with them. In March the Home Secretary announced that there was to be no legislation, and that the law, "as laid down by the civil tribunals of the country," would be enforced. This brought up Campbell of Monzie. "The Right Honourable baronet," he said, "has declared in the most emphatic terms that he will enforce the law against the Church of Scotland. I beg to tell him that he cannot. I defy him to do it."<sup>1</sup> He then moved for a select committee to investigate the question; but this proposal was defeated by the Government, though a majority of Scottish members voted for it.<sup>2</sup>

The Duke of Argyll's bill, which had been read a first time in the House of Lords before the dissolution,<sup>3</sup> was brought into the other House by Mr. Campbell; and the second reading was fixed for the 4th of May. But on that day the Government moved to postpone it till the 15th of June, on the ground that they were now contemplating a measure of their own. Though Mr. Campbell consented, Rutherford divided the House against this delay, but was defeated by a large majority. Nothing more was heard about the Government's bill, except a rumour that Lord Aberdeen and Sir James Graham had threatened to resign if it was brought in. The 15th of June came. Delegates from both parties in Scotland went to the House of Commons to hear their question explained to the English Members. Ruther-

<sup>1</sup> *Hansard*, lxi. 641.

<sup>2</sup> *Ibid.*, 653.

<sup>3</sup> *Supra*, p. 79.



furd had hurried up to London to support the bill. Sir James Graham had that morning told his friends what he meant to say against it. But at the last moment the Speaker intervened. The bill, he said, affected livings of which the Crown was patron, and should not have been brought in without the royal consent. Mr. Fox Maule asked the Prime Minister to waive this objection, and allow the discussion to proceed. Peel, who had not heard of the objection till the House met, refused. He would never, he said, consent to a constructive consent of the Crown on any question which concerned the prerogative. The order for the second reading was, therefore, discharged.<sup>1</sup>

The end of the struggle was at hand. The manifesto of the Church known as the Claim of Rights was sent to the Government.<sup>2</sup> An address to the Queen, praying for the abolition of patronage, was drawn up, and transmitted to London. The Home Secretary acknowledged the receipt of these documents in a letter which is an example of that curiously autocratic manner which he sometimes displayed<sup>3</sup>; and for six months no further notice was taken of them. During these six months events in Scotland hastened on. The Court of Session was occupied with interminable arguments on various phases of the dispute.<sup>4</sup> The House of Lords confirmed a decision of the Scottish judges finding that damages might be recovered from the presbytery of Auchterarder by the patron and the minister who had been rejected.<sup>5</sup> This made the heather blaze yet more fiercely. Church Defence Associations were formed all over Scotland, and in autumn a "Convocation" of four hundred clergymen passed resolutions in which they recapitulated their grievances, and decided, if the Government did not move,

<sup>1</sup> *Commons' Journals*, June 15, 1842; *Hansard*, lxiii. 1584.

<sup>2</sup> *Claim, Declaration, and Protest anent the Encroachments of the Court of Session*, May 30, 1842.

<sup>3</sup> *Sir James Graham to the Marquess of Bute*, June 20, 1842.

<sup>4</sup> *Return showing the Number of Causes at present pending in the Court of Session, respecting the Exercise of Patronage in the Church of Scotland.*—*Parl. Papers*, 1842, xxxiii. 443.

<sup>5</sup> This was in a second Auchterarder case; August 9, 1842.

to go to Parliament for redress, and, if this appeal failed, to resign their livings, and separate from the State.

These resolutions forced the hand of Sir Robert Peel, who wrote to the Queen, saying that "an answer to the demands of the Church will now become necessary."<sup>1</sup> How completely he misunderstood the point at issue is shown by the way in which he represents the dispute as turning on the law of patronage; and how ill-informed he was as to the state of Scotland may be gathered from a sentence in another letter of that period. "I believe," he wrote, "the main cause of the present embarrassment is the subjection of very many ministers of the Church of Scotland, through fear, and against their own conscientious opinions, to the violence and menaces of their leaders."<sup>2</sup> The followers of Chalmers may have been entirely in the wrong; but to say that they were acting against their conscientious opinions was absurd. For eight years a majority of the General Assembly, in which laymen and clergymen sat together, had been of the same mind. Popular demonstrations; Parliamentary elections; votes of Scottish Members in the House of Commons; speeches in the House of Lords by Scottish peers, the Duke of Argyll, the Marquess of Breadalbane, the Earl of Rosebery; the opinions of members of the bar, professors in the Universities, landowners, and wealthy merchants; all made it ridiculous to suppose that clerical domination accounted for the Scottish troubles.

Nevertheless it was under that impression that Sir Robert Peel helped the Home Secretary to prepare the answer of the Government.<sup>3</sup> No attempt was made to answer the Claim of Rights; and, indeed, during the winter of 1842,

<sup>1</sup> *Letters of Queen Victoria*, December 26, 1842.

<sup>2</sup> To Sir George Sinclair, December 7, 1842; Parker's *Sir Robert Peel*, iii. 89.

<sup>3</sup> The answer was composed by Peel and Graham. "It is certainly," Cockburn makes a guess, "not written by Sir James Graham, the Home Secretary, who signs it. Some give it to Duncan McNeill, the Lord Advocate, who I don't believe wrote it. . . It is much liker Lord Aberdeen."—*Journal*, i. 340.

Peel, overwhelmed with business, and leader of a party which was now breaking up into factions, could scarcely have found time to master the subject. What he and the Home Secretary did was to dismiss the claims of the Church by asserting that they were equivalent to the claims of the Church of Rome, and push the question of patronage to the front. As to that they gave the peremptory answer that they would do nothing to satisfy the wishes of the Church.<sup>1</sup>

The Duke of Wellington and the Duke of Buccleuch, and no doubt Lord Aberdeen also, saw the letter; and then Peel sent it to the Queen. "Their demands," she wrote, "are most extraordinary and inadmissible."<sup>2</sup> Peel gravely answered that he rejoiced to hear of the royal approval. He was, however, aware that the Church of Scotland stood on the brink of a great disaster, and warned the Queen that many ministers, followed by their congregations, would secede.<sup>3</sup>

At the end of January a special meeting of the "Commission" of Assembly was called to discuss the Home Secretary's letter. An important case had just been decided. In 1834 the Assembly which passed the Veto Act had, under the same misapprehension of the probable consequences, passed what was known as the Chapel Act, which provided that ministers of non-parochial charges should sit in the courts of the Church, and have assigned to them districts made into parishes by the presbyteries within the territorial boundaries of which these districts lay.<sup>4</sup> This had been done in so many places that about two hundred new congregations had been added to the Church of Scotland within a few years; but the question was raised as to whether this was legal, and the matter came to a final decision in the case of Stewarton in Ayrshire,

<sup>1</sup> The letter, dated January 4, 1843, is in *Parl. Papers*, 1843, xlix. 481. It will also be found in *Acts of the Free Church Assembly*, 1843, and in the *Annual Register* for 1843, pp. 441-470.

<sup>2</sup> The Queen to Peel, December 29, 1842, Parker, *Sir Robert Peel*, iii. 97.

<sup>3</sup> Peel to the Queen, December 30, 1842, *Letters of Queen Victoria*.

<sup>4</sup> *Declaratory Enactment as to Chapels of Ease*, May 31, 1834.

where the presbytery of Irvine had created a new parish. The patron of Stewarton, out of which the new parochial district was to be carved, and several landowners, applied to the court for an interdict, or injunction, against the whole proceeding. This question was debated, before the whole court, by Dean of Faculty Robertson and Rutherford at great length; and the judges, by a majority of seven to five, decided that the presbytery of Irvine could not lawfully create the separate parochial district, and that the minister of such a district must not sit in the Church courts.<sup>1</sup>

When the Commission met the Moderate party moved that, in deference to this judgment, all those who were ministers of non-parochial charges, erected under the Chapel Act, should be excluded. This motion was defeated; and the Moderate party at once withdrew on the ground that the Commission was not legally constituted. Thus left complete masters of the field, the Non-intrusion party, who had defeated the motion by 115 votes to 23, passed resolutions in answer to the Home Secretary's letter, and decided that, seeing no help from Government could be hoped for, the time had come for an appeal to Parliament.<sup>2</sup>

<sup>1</sup> *Cunninghame and others v. Presbytery of Irvine*, January 20, 1842. In the course of this case Mr. Dunlop, who was one of the junior counsel for the presbytery, said in a written pleading that his clients would continue to obey their ecclesiastical superiors, whatever the judgment of the civil court might be. This gave great offence; and Rutherford, who had some difficulty in appeasing the judges, cancelled the statement of which they complained. Mr. Dunlop himself appeared in court, and made an apology.

<sup>2</sup> The second resolution was in these words: "The letter seems to assume that the Church placed her application for the abolition of patronage on the same footing with her claim to be protected against the invasions of the civil courts, in the exercise of her spiritual functions and jurisdictions, as solemnly ratified by statute and by national treaty; and that the Church considered both of these measures as equally indispensable to the continuance of her connexion with the State; whereas it was the vindication of her spiritual jurisdiction which the Church claimed as being indispensable to her existence; the abolition of Patronage she sought as a concession she deemed right and desirable."—*Acts of Assembly (Commission)*, January 31, 1843. It was now eight months since, for the first time, a resolution in favour of the abolition of patronage had been carried in the General Assembly (*Acts of Assembly*, May 23, 1842). Chalmers had reluctantly come round to the views of those who had all along wished for



A petition was drawn up which recited the grievances of which the Church complained, and prayed the House of Commons to take measures to secure the independent jurisdiction of the ecclesiastical courts, and to alter the law of patronage so as to prevent the intrusion of ministers against the will of the congregations. The question was how to obtain some practical result. Mr. Fox Maule proposed to move certain resolutions; but it turned out that technical objections were likely to be raised against them, and Rutherford took the matter into his own hands. It seemed to him that it was useless to expect that the Commons would grant the prayer of the petition merely on the statements made by the Church, and that the proper course was to ask for an inquiry. He, therefore, after consulting the Speaker, gave notice that he would move: "That this House will immediately resolve itself into a committee, to take into consideration the petition of the Commission of the General Assembly of the Church of Scotland, and the matters therein contained."

On the 7th of March, Mr. Fox Maule, who had been in Scotland when this motion was tabled, took Rutherford's place, and tried to show the House that when there was a conflict of jurisdictions between two courts it was the duty of Parliament to intervene, and, if necessary, pass a declaratory Act to settle the dispute. Sir James Graham objected to any inquiry, on the ground that the pretensions of the Church were so unreasonable that they could never be realized, "except in a country where law, order, equity, and commonsense had ceased to reign."

This blunt refusal even to consider the questions which had occupied the people of Scotland for so long gave Rutherford his opportunity. The point at issue, he said, was not the character of the claims made by the Church, but whether, in point of fact, they were founded on the laws of Scotland. They were not extraordinary, merely because they might

the abolition of patronage; but to the "popular election" of ministers he was opposed. "I have no faith," he said, "in the infallibility of the popular voice. I do not subscribe to the maxim *vox populi vox Dei*."

appear so to those who were familiar only with the laws of England and the English constitution. He explained the statutes on which the Church relied, and their history, and pressed the argument that, even if the claims of the Church were unreasonable, the law of Scotland had recognized them, and Parliament alone had power to change that law. Let Parliament find, by an impartial inquiry, whether or not the claims of the Church of Scotland were lawful claims. All that was asked was an inquiry. "Let it not be imagined," he said, "that the courts of law are coming out of this inquiry with honour." Their orders were openly disobeyed. He had been blamed, when Lord Advocate, for refusing to prosecute; but he had refused, and so had his successor. If there had been faults in this dispute, there had been faults on both sides. "I will say," he told the House, "though I have to meet the judges in a day or two, that the language used on the bench has done much to exasperate the evil. The clergy have been spoken of by one judge as rebels and thimblerriggers. I will not name the judge; but I say, with extreme pain, that language of that sort has done much to embarrass the question." There was a dangerous crisis in Scotland; and he appealed to the House to go into committee, and consider, fairly on their merits, the questions raised in the petition.<sup>1</sup>

Sir George Grey was the most prominent English Member who spoke for the motion. Lord John Russell opposed it; and both he and the Prime Minister devoted their speeches to answering Rutherford. "My Right Honourable friend, the Member for Leith," said Lord John, "has said that the Church does not claim supreme power save over what is spiritual, and that she allows the civil authority in other matters; but I cannot conceive the connexion between Church and State carried on under such conditions."<sup>2</sup> Sir Robert Peel spoke in the same way. "The Right Honourable gentleman opposite," he said, "says that these courts, civil and ecclesiastical, have a co-ordinate jurisdiction. That would amount to something very like

<sup>1</sup> *Hansard*, lxxvii. 394.

<sup>2</sup> *Ibid.*, 466.

a separation of Church and State. It is, in fact, impossible that the two courts can co-exist.”<sup>1</sup>

Against this impenetrable resolve to refuse all inquiry into what the law actually was no appeal prevailed. The Scottish Members were anxious to hear how a lawyer of such great skill and experience as Sir William Follett, the Solicitor-General for England, would answer Rutherford ; but he did not even attempt an answer, and contented himself with a general denial that there could be the two independent courts of which Rutherford had spoken. “I cannot,” he said, “believe that such is the law of Scotland.”<sup>2</sup>

The debate occupied two evenings ; and when the House divided, the motion to go into committee was defeated by 211 to 76. Of the Scottish Members, ten Conservatives and six Liberals were absent. One of these was Rutherford himself, who had probably obtained a pair, and hurried down to Scotland to “meet the judges.” Of the thirty-seven who voted, twenty-five were for the motion, and twelve against it. Thus, so far as the Scottish Members were concerned, there was a majority of two to one for going into committee. But the Ministers, including Mr. Gladstone, who was then Vice-President of the Board of Trade, outvoted them. Lord John Russell, in company with Lord Palmerston, voted with the Government, though his brother, Lord Edward, and Sir George Grey were in the minority, which included Macaulay and Mr. Gibson Craig, Captain Dalrymple, in later days so popular in Scotland as the tenth Earl of Stair, Lord Dalmeny, and others bearing well-known names.

Lord Campbell made what he calls a “vigorous effort to prevent the disruption of the Church of Scotland,” by

<sup>1</sup> *Hansard*, lxvii. 491.

<sup>2</sup> *Ibid.*, 482. This failure to grapple with the argument for the Church seems to have been noticed by persons who were not concerned in the dispute. “So far as I can judge,” one writer says, “the speech of Mr. Rutherford was never answered, and the arguments of Sir James Graham and Sir Robert Peel were rather of what would be expedient were a new law to be made than a reply to the law of the Church, as established by several solemn Acts.”—*Memoir of Dr. Landsborough*, p. 186.

moving resolutions in the House of Lords, for the failure of which he blamed Lord Aberdeen.<sup>1</sup> But the Court of Session had followed up the judgment in the Stewarton case by decrees forbidding the representatives of the non-parochial charges to sit in the General Assembly. It was useless to continue the struggle; and on the 18th of May, 1843, the Non-intrusion party laid their last protest on the table, bowed to the Queen's Commissioner, and left the place of meeting.

The disruption was formally completed by an "Act of Separation and Deed of Demission," under which Chalmers and his party renounced their connexion with the State, and gave up their churches, houses, lands, and incomes. The final steps by which a part of the Church of Scotland thus disestablished and disendowed itself were taken under the legal advice of Rutherford, who received a vote of thanks from the first General Assembly of the "Free Church" for his speech in the House of Commons.<sup>2</sup>

The theory of the Free Churchmen was that they had not left the Church of Scotland. We are the Church of Scotland, they said. As the Church of Scotland we presented the Claim of Rights to Government. As the Church of Scotland we appealed to Parliament. As the Church of Scotland we still hold that it is the duty of the State to maintain an Established Church. But we purpose to remain free and separate from the State, until Parliament gives us the rights we claim, adopts us as the Establishment, and leaves us to deal with the clergy of the present Establishment as so many ecclesiastical delinquents who have forsaken their original principles.<sup>3</sup> And, indeed, in the General Assembly of the Free Church no change was seen

<sup>1</sup> *Life of Lord Campbell*, ii. 176; *Hansard*, lxxviii. 218.

<sup>2</sup> A committee was appointed "to wait on Mr. Rutherford, to ascertain in what way it would be most agreeable to him that the thanks of the Assembly be communicated."—*Proceedings of Free Church Assembly*, May 26, 1843.

<sup>3</sup> *Evidence of Dr. Chalmers, Second Report of Select Committee on the Refusal of Sites to the Free Church*, Q. 6368. *Parl. Papers*, 1847, xiii. 311.



except that the Royal Commissioner and the Officers of State were not there. The "Moderator," in court dress, occupied the chair as usual. The old forms of procedure were preserved. The clergy and the laity were of the same social standing as those who remained in the Established Church. Throughout the country the system of government was unaltered. Theological colleges were instituted at home, and foreign missions were continued abroad. The territorial boundaries of parishes were the same as before. The only differences were that the question of patronage was out of the way, and that the stipends were paid from a central fund, which took the place of the ancient endowments, and was so distributed that no clergyman was dependent for his income on the caprice of his parishioners. There was no lack of money. Rich and poor alike subscribed; and their contributions were so liberal that month after month large sums were poured into the common treasury.<sup>1</sup>

This brilliant success, the intense conviction that he had been wronged which every man carried with him when he walked out of his home, natural resentment too at the refusal of sites for new churches and manses—a species of petty persecution which continued for some years—may explain the arrogant way in which too many of the Free Church leaders spoke of those who did not join them. When a Free Churchman, accused of holding the principles of Hildebrand or Laud, retaliated by calling his accuser an "Erastian" no harm was done. But constantly to insinuate that only a Free Churchman could be a good

<sup>1</sup> In June, 1845, the Marquess of Breadalbane, himself a Free Churchman, told the House of Lords that 530 churches had been built since the disruption, that the number would soon be increased to 700, and that £725,452 had been subscribed in two years. *Hansard*, lxxxi. 270. Rutherford was one of those who gave donations of money and books to the library of the Free Church. Mr. Patrick Maxwell Stewart, M.P. for Renfrewshire, said in the House of Commons that the proportion to the population of Scotland of these who joined the Free Church at the disruption was as if 5,000 clergymen and 8,000,000 of the people had left the Church of England. *Hansard*, lxxv. 402.

Christian; to describe those clergymen who remained in the Established Church as apostates and blood-suckers; to call them traitors, renegades, and hirelings; this was a very different thing. Yet all these words were actually used; and the *Witness* newspaper, the official mouthpiece of the Free Church, advised the people of Scotland to treat the parish clergyman as an outcast under sentence of excommunication, as "the man with whom no one is to join in prayer; whose church is to be avoided as an impure and unholy place; whose addresses are not to be listened to; whose visits are not to be received; who is to be everywhere put under the ban of the community."<sup>1</sup> Most of the peaceable country ministers, the last survivors of whom have long since been laid to rest in the quiet graveyards of the parish churches they so honourably left, disregarded this shameful advice, and lived in harmony with their neighbours. But in the towns there were others, whose violent speeches and aggressive temper, encouraged by popular applause, raised a bitter feeling against all Free Churchmen, which lasted for many years, and was, soon after the disruption, one of the causes of a movement to exclude them from offices in the Scottish Universities.

A statute passed by the Scottish Parliament after the Revolution required professors and other office-bearers to sign a declaration that they accepted the Westminster confession of faith, and would submit to the government of the Presbyterian Church as established by law.<sup>2</sup> At the Union the Act of Security contained a clause to the same effect.<sup>3</sup> This test applied to secular and theological offices alike; but for many years before the disruption, theological chairs alone had been held exclusively by members of the Established Church. After the disruption Chalmers, who was Professor of Divinity at Edinburgh, and Dr. Welsh, Professor of Church History, at once resigned. These

<sup>1</sup> *The Witness* (leading article), June 3, 1843.

<sup>2</sup> *Act for the Visitation of Churches, Colleges, and Schools*, July 4, 1690.

<sup>3</sup> *Act for Securing the Protestant Religion and Presbyterian Church Government*, January 16, 1707.

resignations of theological professors were obviously inevitable. But Free Churchmen who held secular offices retained them ; and an attempt was made to apply the test, and drive them from the Universities.

It says little for the wisdom of the moving spirits in this attempt to enforce a test which had fallen into desuetude that they should have chosen to attack the Free Church in the person of one of the most distinguished men of science in Great Britain. The discoveries and writings of Sir David Brewster, Principal of the united colleges of St. Salvator and St. Leonard in the University of St. Andrews, had gained him credit, not only in this country but abroad. The Institute of France, and the Royal Academies of several continental nations, had bestowed honours upon him. He was highly esteemed by every learned society in Europe ; but he left the Established Church of Scotland, and the presbytery of St. Andrews forthwith challenged his right to hold office in the University, insisting that he should not only be removed, but also censured and punished “ for the glory of God, the safety of the Church, and the prosperity of the University.” <sup>1</sup>

This effort to promote the prosperity of an University by expelling its most eminent member failed. The law, though requiring office-bearers to sign the test declaration, had not provided for any penalty if they changed their opinions. Free Churchmen, therefore, could not be deprived of their chairs ; but the test might be used to prevent the appointment of other Free Churchmen in future. This raised the whole question of tests in the Scottish Universities ; and in April, 1844, Mr. Fox Maule moved for leave to bring in a bill to abolish them, except for the theological chairs. He was supported by Rutherford, in one of his best speeches ; but the Government was too strong, and, though a large majority of Scottish Members voted with

<sup>1</sup> The presbytery acted against the advice of counsel, Mr. John Inglis, afterwards Lord President, having signed (November 13, 1843) an opinion advising them not to proceed.—*Case for the Presbytery of St. Andrews in the Libel against Sir David Brewster*, 1845.

Mr. Rutherford and Mr. Maule, leave to bring in the bill was refused.<sup>1</sup>

The Radical Members for the city of Glasgow had voted with Sir Robert Peel on the Church question. But the sympathies of the University were on the other side ; and in the autumn of 1844, a few months after his speech against the tests, Rutherford was proposed for the office of Rector. These rectorial elections turned, as a rule, on politics. Three members of the Government had been Rectors of Glasgow University, Sir Robert Peel, Lord Stanley, and Sir James Graham<sup>2</sup> ; and Lord Eglinton was now brought forward by the Conservatives. Liberalism was, however, predominant in the University ; and Rutherford was elected.<sup>3</sup>

In January, 1845, a party of his friends went from Edinburgh to hear his inaugural address, which he delivered in the old common hall of Glasgow College. One of them was Cockburn, who thought the address suffered from being "every word pre-composed." Though stately and eloquent, as all Rutherford's orations were, it was perhaps too highly polished ; but the members of the University received it with loud applause, and one passage was particularly noticed, in which the new Rector expressed his regret that "the same liberality which has opened your schools to the taught has not been extended to the teachers." This was taken as a hint that the abolition of the tests would be again proposed in Parliament.<sup>4</sup>

If the Scottish Members had been left to decide the ques-

<sup>1</sup> *Hansard*, lxxiv. 480.

<sup>2</sup> The Duke of Sussex was put up against Sir James Graham, and there were great rejoicings at the defeat of "the Queen's favourite uncle." Sir James received a letter from Sir Henry Hardinge full of triumph that "the Royal Radical of Kensington," was beaten. "I know," he wrote, "that it was a bitter disappointment to the Whigs."—Parker, *Sir James Graham*, i. 276.

<sup>3</sup> "His Lordship failed solely because he is a Tory and a Churchman, whereas Rutherford is a Whig, and rather a Free Churchman."—Cockburn, *Journal*, i. 97. This was the 3rd Earl of Eglinton, whose tournament at Eglinton Castle had been so much talked about in 1839.

<sup>4</sup> This address (January 10, 1845) is published in *British Eloquence of the Nineteenth Century* (3rd series), and in the collection of *Inaugural Addresses by the Rectors of Glasgow University*.



tion for themselves, Mr. Fox Maule's bill would have gone through the House of Commons easily ; and it was possible that the Lords might have passed it. Rutherford, therefore, resolved to make another attempt ; and when Parliament met his bill was ready. But before the day came on which he was to ask for leave to bring it in, the Commons had to settle another question, on which the Established Church and the Free Church, laying aside their disputes about University tests and other matters, were in complete agreement.

When Sir Robert Peel resolved to increase the grant to Maynooth College he foretold opposition in Scotland ; and he was not mistaken. Though first given by the Protestant Parliament of Ireland the grant had always been detested by the Presbyterians ; and when the bill was brought in to increase it from £9,000, voted annually, to £30,000, and make it permanent, an agitation arose in Scotland which, though not so violent as the agitation against the repeal of the penal laws in 1778, or against Catholic Emancipation in 1829, soon spread all over the country. The Member for Selkirkshire, a Lord of the Treasury, resigned office. From the Pentland Firth to the Cheviots public meetings protested against endowments to " the Babylon of Iniquity," and " the Son of Perdition " ; and a new Solemn League and Covenant was proposed, which was to be signed by " a phalanx which will loose the joints of the uncircumcised with deadly fear." The Assembly of the Established Church sent up a petition to Parliament and an address to the Throne against the bill. Mr. Fox Maule's first speech in the Assembly of the Free Church was an attack upon the grant ; and a " Committee on Popery " was instructed to consider the best means of " defending the cause of Truth against the opposition of the Man of Sin." The " Voluntaries " agreed with both Churches, and hoped that this endowment of Roman Catholics would " rouse the public to a sense of the numerous evils springing from the Establishment principle."

Macaulay and Mr. Gibson Craig received an address in-

timating that those who signed it would never vote for them again, if they dared to support the grant ; and all the Scottish Members were warned that they would have a heavy account to settle with their constituents if they spoke or voted for it. Rutherford, however, like Macaulay, was not to be intimidated by these threats. It was on the 14th of April, 1845, that Macaulay made the speech in which he used the words which infuriated so many of the electors : " The Orangeman raises his war-whoop ; Exeter Hall sets up its bray." <sup>1</sup> Two days later, on the fourth evening of the debate, Rutherford spoke in a way which encouraged other Whigs from Scotland to show that they would not yield to popular clamour. He knew, he said, that he was giving an opinion which was against the sentiments of many of his constituents, and that he might be called to account for his vote ; but his reply would be that the question was one with respect to which he must act on his own convictions. He, therefore, voted with the Government in the division when the second reading of the bill was carried. <sup>2</sup>

The way was now open for the bill to abolish the test for secular, or lay, chairs in the Scottish Universities ; and on the 1st of May Rutherford moved for leave to bring it in. His speech made such an impression that the Ministers, who had intended to oppose the motion, did not divide the House. He obtained leave ; and the bill was afterwards brought in, and read a first time at midnight on the 6th of May. <sup>3</sup> But the second reading was not reached till July ; and in the meantime the General Assembly of the Church of Scotland had met.

When Mr. Fox Maule's bill was before the country, in the previous year, the Assembly had sent to all Members of Parliament a resolution which declared that the abolition of the test would inflict " a fearful injury " on the Scottish

<sup>1</sup> *Hansard*, lxxix. 646.

<sup>2</sup> On April 16, 1845. Mr. Fox Maule was the only Whig ex-Minister who voted against the grant.

<sup>3</sup> *Commons' Journals*, May 6, 1845,

Universities, and bring peril, not only to Scotland, but to every part of the British Empire.<sup>1</sup> A similar resolution, condemning Rutherford's bill, was now carried by a huge majority, and a petition against it was sent to Lord Advocate McNeill for presentation to the House of Commons.<sup>2</sup> These proceedings confirmed the Ministers in their determination to maintain the test. Rutherford was unable to attend and move the second reading of his bill; but he provided a brilliant substitute in Macaulay, who, after a graceful compliment to "my honourable and learned friend the Member for Leith,"<sup>3</sup> made a speech so powerful that only the compulsion of the party system could have induced a majority of the Commons to vote against him. Even as it was, he very nearly carried his point, though the Ministers had resolved to outvote the Scottish Members as they had outvoted them on the Claim of Rights two years before. The bill was thrown out, but only, in spite of the Government whip against it, by eight votes. The Scottish Members were more than two to one in favour of it.<sup>4</sup>

Soon after Parliament rose Rutherford and the Scottish Members had something more serious to think of than whether Protestantism would perish if the students at a Catholic college were allowed some of the comforts which every undergraduate at Oxford enjoyed, or whether the Universities of Scotland would be ruined by the presence of such men as Chalmers and Brewster. Every traveller by the weekly steamboat from Belfast to Stranraer brought evil tidings about the potato crop in Ireland. In Scotland, as in England that year, the harvest was bad—it was the first bad harvest since Sir Robert Peel came into power—; and in October

<sup>1</sup> *Proceedings of Assembly*, May 24, 1844.

<sup>2</sup> *Ibid.*, May 27, June 2, 1845. The resolution was carried by 246 to 11. The Free Church, of course, supported the bill. *Act anent the Tests in the Universities of Scotland*, May 31, 1845.

<sup>3</sup> "I am truly sorry he is not among us to take charge of the bill which he not long ago introduced with one of the most forcible and luminous speeches that I ever had the pleasure of hearing."

<sup>4</sup> *Hansard*, lxxxii. 227-279. Cockburn, alluding to the loss of the bill, says, "The reason for this was that the General Assembly was against it."—*Journal*, ii. 111.

it could no longer be doubted that the country was face to face with the possibility of famine. The crisis of Peel's career had come. "The remedy," he told Sir James Graham, "is the removal of all impediments to the import of all kinds of human food—that is, the total and absolute repeal of duties on all articles of subsistence."<sup>1</sup> Then the Cabinet began to deliberate, three or four times a week, on whether the food taxes should be removed, whether Parliament should be summoned, whether the ports should be opened by an order in council.

In the summer of that year Lord John Russell, Lady John, her son and daughter, Lord Ribblesdale and Mrs. Warburton, and Lord Amberley, who was then a child, had gone to Scotland for Lady John's health. She grew worse, and they had to visit Edinburgh to consult the doctors. Rutherford had now a country house in Midlothian, Lauriston Castle in the parish of Cramond, formerly the property of John Law, the notorious financier of the early eighteenth century. When he bought it, it was merely a square tower with turrets, surrounded by a ruined wall, and standing in the midst of pasture lands. But he had made additions, and changed it into a commodious and attractive mansion with gardens noted for their beauty. This place he lent to Lady John Russell and her party, who left their hotel in Edinburgh, and lived at Lauriston till the following spring, Lord John coming to see them from time to time. It was during one of these flying visits to Scotland, when the Ministers, unable to agree but naturally unwilling to break up their party, continued to deliberate, and the weeks passed on with nothing done, that Lord John sent his memorable Edinburgh letter to the electors of London, abandoning the fixed duty, and declaring for the total repeal of the corn laws.

The Government, Lord John said, appeared to be waiting for some excuse to give up the corn laws; so let the people, by petition and remonstrance, afford them the excuse they wanted. In response to this suggestion many public meet-

<sup>1</sup> Parker, *Sir Robert Peel*, iii. 224.



ings were at once held in Scotland.<sup>1</sup> On the 1st of December Rutherford took one of his nephews<sup>2</sup> down with him to Leith, and spoke at a meeting called to petition Government to open the ports; and on the afternoon of the next day he was at another meeting in the Music Hall at Edinburgh. Adam Black, then Lord Provost, was in the chair; and on the platform were Lord Dalmeny, Sir James Gibson Craig, Sir Thomas Dick Lauder, Sir George Macpherson Grant, Sir Charles Napier, and many other notable Whigs, assembled to hear Macaulay, who had torn himself away from his study in the Albany and journeyed to Scotland for that one day, make a speech which was cheered again and again by an audience many of whom were, no doubt, to be amongst that hostile crowd which gathered before the hustings in the summer of 1847, but who were now all with him when he declaimed against the evils of protection.<sup>3</sup>

When Rutherford spoke he argued that, though something might still be said in favour of the fixed duty, there was no defence for the sliding scale; because, if there was a sliding scale the foreign grower could never safely grow corn for the British market, whereas, with the harbours open for free imports, or even with a fixed duty, he could calculate the supply needed for this country. But the pressing question, of which all were thinking, was whether the Government would open the harbours, so that the people might have sufficient food. "After all the anxiety which prevails," he said, "we are only told that the Cabinet deliberates. The Cabinet deliberates! and the ports of the

<sup>1</sup> Lord John's letter appeared first in *The Times* of November 27, and was printed in the *Scotsman* of the 29th.

<sup>2</sup> John Thomson Gordon, son of Rutherford's eldest sister Margaret, wife of John Gordon, F.R.S.E. He was afterwards Sheriff of Midlothian.

<sup>3</sup> The feeling against the corn laws had lately been stronger in Scotland than during the general election of 1841. "The free trade agitation, we rejoice to see, is again rising into vigour and activity," the *Scotsman* said the day before Lord John's letter was published in *The Times*. Conservatives, as well as Liberals, had asked the Lord Provost to call the Edinburgh meeting, at which a letter from Chalmers was read, in which he said he was for repeal, "though not so sanguine as many of a great and permanent good to result from the abolition of the corn laws."

north are closed by ice. The Cabinet deliberates ! and your vessels have been twice allowed to cross the Atlantic, and return, without any power being given to secure a proper supply of food, or any attempt being made to prepare the markets of America for affording that supply out of their abundance. The Cabinet deliberates ! and months have been lost, during which no ships have gone to Odessa. The Cabinet deliberates ! and still no decision has been come to, although the Governments of Holland, Belgium, and Turkey have been carrying away the grain stored in our bonded warehouses, which the sliding scale will not allow the people of this country to touch. The Cabinet deliberates ! and scarcity, if not famine, is at your gates."

It may be imagined how this way of describing the situation appealed to men in whose eyes the worst fault of the Ministers was that they were doing nothing to meet the distress which threatened the country. "The speeches," said the *Scotsman*, "especially those of Mr. Macaulay and Mr. Rutherford, told with immense effect, and were cheered to the echo. Edinburgh, though rather tardy, has done its duty to the cause of corn law reform in excellent style."

The long-drawn battle came to an end on the 26th of June, 1846, when on the same evening, the Lords passed the bill for the gradual repeal of the corn laws, and a coalition of Protectionists and Liberals in the House of Commons threw out the Irish coercion bill, and with it the Government of Sir Robert Peel.

There must have been Conservatives in Scotland who saw with grim satisfaction the fall of an administration which had been put in office by Conservative votes to maintain protection, and had, by the help of Liberal votes, carried a free trade measure ; but in the Parliament House those who had gone out seem to have felt only sorrow that those who had come in were again in possession of the loaves and fishes, and likely, owing to the disruption of the Conservative party, to have the disposal of them for many a long year. Lord Justice Clerk Hope pours out his lamentations in a letter to Sir James

Graham. There is no one in Lord John Russell's Government who will inspire confidence in Scotland. "The narrow party feeling of the original Edinburgh Whigs" will decide everything; and everything will go wrong, as everything went wrong after the Reform Act till 1841, when Sir Robert Peel came in, with Sir James Graham at the Home Office to put everything right.

The loaves and fishes were distributed: and, with one exception, the Scottish Members who received appointments were re-elected without opposition. Rutherford, again Lord Advocate, went down to Leith, congratulated the electors on the corn law victory, defended his vote for the Maynooth grant, received a unanimous vote of confidence, and was returned on the 9th of July. Two days later, Mr Fox Maule, now Secretary at War, was elected for Perth.<sup>1</sup> Mr. Gibson Craig, a Lord of the Treasury, was at once returned for Edinburgh; and in Kirkcudbrightshire there was no opposition to Mr. Maitland, the Solicitor-General for Scotland.<sup>2</sup> But against Macaulay, who became Paymaster of the Forces, the movement which came to a head next year had already begun. A plot, the springs of which lay hidden in the local politics of Edinburgh, had been secretly hatched some months before, by a conclave who decided to try their strength by attacking Macaulay's seat. Their ostensible purpose was "to secure the return to Parliament of Members of sound Protestant and evangelical character."<sup>3</sup> This was enough for many well-meaning people, in whose eyes the grant to Maynooth was a national sin. Macaulay's vote for an inquiry into the Claim of Rights; his efforts for the abolition of the test; his declar-

<sup>1</sup> Earl Grey was Secretary for War. It was when Mr. Fox Maule (then Lord Panmure) succeeded the Duke of Newcastle at the War Office, in 1855, that the distinction between the Secretaries "for" and "at" War was abolished.

<sup>2</sup> Thomas Maitland, afterwards Lord Dundrennan, had been Solicitor-General in 1840-41, and Member for Kirkcudbrightshire since August, 1845. He went on the bench in 1850, and died next year.

<sup>3</sup> *Memorandum of a Private Meeting held on 17th March, 1846.*—*Caledonian Mercury*, July 13, 1846.

tion to the Commons that Carstairs, if he rose from the dead, would tell them that the Church of Chalmers and Brewster was the Church of Scotland as it existed at the Union; all these things, which might have been counted unto him for righteousness, were forgotten. Sir Culling Eardley Smith was brought down to win votes by assuring the electors that if he had been their Member, he would never have voted money for the Son of Perdition and Babylon of Iniquity. So the lists were set, and there was a week of most unpleasant turmoil. "The struggle," the *Witness* said, "is exciting the deepest interest, and, as the beginning of a decided movement on the part of Christians to send men of avowed Christian character to Parliament, may lead to great results."<sup>1</sup> The result on this occasion was a majority of nearly one thousand for Macaulay, whose opponents had to endure, for twelve months longer, the indignity of being represented in Parliament by a famous orator and man of letters, whose rising filled the benches from which they had endeavoured to exclude him.

When the House of Commons met again in January (1847), the Lord Advocate said, in answer to a question by Mr. Joseph Hume, that he purposed to bring in several measures for Scotland, especially bills dealing with the law of real property.<sup>2</sup>

Changes in the antiquated laws of Scotland relating to landed property and its incidents had been expected for some time. Lord Advocate McNeill had carried two statutes which began what Cockburn called "putting commonsense into our deeds"<sup>3</sup>; and now Rutherford intended to go further. The owners of land in Scotland were

<sup>1</sup> *The Witness*, July 11, 1846.

<sup>2</sup> *Hansard*, lxxxix. 210. Mr. Hume, who was defeated at Leeds during the general election of 1841, had been returned, at a by-election in the following year, for the Montrose district, which he continued to represent till his death in 1855.

<sup>3</sup> 8 & 9 Vict. c. 31, which amended the law for dealing with deeds by which lands were pledged for debt; and 8 & 9 Vict. c. 35, which simplified the procedure by which land was acquired, and also diminished the expense.



hampered at every turn, in dealing with their possessions, by the cumbrous system which had been handed down from former days. After a long period of depression property in land was becoming more valuable. The shock caused by the sudden transition from the high prices of farm produce during the great war, to the stagnation caused by the peace, had pressed heavily on the landed interest. Under the stimulus of high prices improvements had been pushed forward at too rapid a pace. Landlords had incurred heavy expenditure of capital in reclaiming waste lands, and tenants had entered into corresponding engagements. This ended in bringing loss upon both ; and it was long before the pressure ceased to be felt. Nevertheless, farming in Scotland had, thanks to the enterprise of landowners, and to the intelligence, thrift and skill of their tenants, reached a wonderfully high level in spite of all obstacles. But whenever the landowner wished to use his property as a source of credit, or to realize it in the market, he met with delay, difficulty, and expense, caused by the laws under which a title to the possession of land had to be made good ; and the procedure by which an heir, succeeding either under the law of primogeniture or by will, obtained his inheritance, was loaded with unnecessary and costly formalities. Over and above all this, there was the system of entails, which had laid its fetters on the free use of land over a large part of Scotland. Rutherfurd proposed to simplify the law relating to the transfer of land, whether by succession, by sale, or by pledge for the purpose of raising money ; and he was, in addition, considering the best means, in the interests of landlords, tenants, and labourers, for relieving estates held under deeds of entail.

This question of the entailed estates required careful handling. Though the law of England abhorred perpetuities, they had long since taken deep root in Scotland ; and of all human weaknesses, none was more natural, or less deserving of blame, than the weakness of clinging to the acres and the rooftree, and trying to leave them, for all time coming, in the possession of kinsfolk. Whether it was a great estate,

or a mere croft, a castle surrounded by pleasure grounds, or a thatched cottage in a kailyard, it was all the same. Every Scotsman would have liked to feel sure that his home was to be the home of his descendants. The owners of small houses and mere patches of land sometimes entailed them ; but this sentiment was naturally strongest amongst families owning extensive domains and fine mansions. The possession of property in land was associated in the old families with memories and traditions of the past, and amongst those who had recently acquired wealth with hopes and plans for the future ; and in either case it gave a sense of security to the individual, and, by peopling the country with a class which, whether wealthy or poor, shrank instinctively from sudden and violent changes, was a source of stability in the social conditions of Scotland, which was increased by the kindly relations which generally existed between the landowners and their tenants. But the Scottish Parliament had gone too far in its zeal to assist those who possessed estates to tie them up.

There were entails before 1685 ; but in that year, when many of the landowners of Scotland, at the crisis of the Stuart tyranny, knew that charges of treason might at any moment be brought against them, to be followed by attainder and the loss of their estates, the Scottish Parliament passed a statute under which estates might be entailed to perpetuity, and which contained provisions ingeniously devised for the purpose of preserving from extinction the families of those who might fall under the displeasure of the Crown.<sup>1</sup> Meant as a protection against forfeitures for political offences, this statute became, as deeds of entail multiplied, a cause of serious evils in private life. The character of many of these deeds is well known. The heir of entail in possession of the estate could not grant leases for

<sup>1</sup> *Act concerning Tailzies*, May 27, 1685. In 1709, when the Treason Law of Scotland was assimilated to that of England, and the Scottish entails became subject to the English law of forfeiture, an exception was made in favour of the issue of those heirs of entail who were married before July 1, 1709, when the new law came into force. *Act for Improving the Union of the Two Kingdoms*, 7 Anne c. 21.

a period longer than his own life, or, in some cases, for more than two or three years. He could not settle a jointure on his wife, or make provision for his younger children. He could not exchange land with his neighbour. He could not sell an acre of ground. He could not borrow, even to make the most useful improvements. Sometimes he could not cut timber or quarry stone. These and a host of other fetters might bind the heir of entail, and ruin the estate of which he was nominally the possessor, but in reality only the life-renter. The preservation of landed estates, and of the families which had long possessed them, was obviously desirable in the interests of the whole country; but the effect of the entails was to tie the hands of many families so fast that their estates, instead of being a source of private happiness or public benefit, became mere burdens and contributed nothing to the general welfare of the Scottish people, but rather the reverse.

When the country was settling down after the Jacobite rising of 1745 a movement began for relaxing the restrictions which hampered so many landowners. A network of entails was by this time gradually spreading over Scotland. Adam Smith, writing about the year 1775, estimated that more than one-fifth, perhaps one-third, of the land was under strict entail.<sup>1</sup> The system had already been condemned by the Scottish bar.<sup>2</sup> An Act of Parliament was passed, which gave the heirs of entail power to set apart the rents for six years after their deaths to pay for improvements, and to grant leases of considerable length.<sup>3</sup> Other statutes followed, such as the Aberdeen Act of 1824,<sup>4</sup> and the Rosebery Act of 1836.<sup>5</sup> In the year 1846 it was computed that one-half of the whole landed property in Scotland was entailed. Committees examined the subject, and made reports. All over the country agriculturalists were com-

<sup>1</sup> *Wealth of Nations* (Ed. 1828), ii. 183.

<sup>2</sup> *Minutes of the Faculty of Advocates*, August 4, 1764.

<sup>3</sup> *The Montgomery Act*, 1770 (*Entail Improvement Act*), 10 Geo. III. c. 51.

<sup>4</sup> *The Entail Provisions Act*, 5 Geo. IV. c. 87.

<sup>5</sup> *The Entail Powers Act*, 5 & 7 Will. IV. c. 42.



plaining ; and further legislation was called for by a public meeting of landowners holding entailed estates.

Possessing a wide knowledge of the history and working of the land laws, and also that rarest of gifts, the power of foreseeing how, in actual practice, new laws are likely to affect a variety of conflicting interests, Rutherford avoided the pitfalls into which eager reformers in their haste are apt to stumble. He had long studied this whole question of the land in the spirit of the wise hints given by Dalrymple : "Revolutions in the laws of land property are ever attended with important consequences ; and therefore, before they are made, it behoves men well to look forward, and examine whether these consequences will be good, as they wish, or may be bad, as they may not foresee ; and in so doing, their thoughts must not be narrowed to one object, nor superficial, nor implicitly taken up, but must comprehend a variety of relations, must be deep, and must be weighed with independence of thought." <sup>1</sup> Rejecting any superficial and hasty projects, Rutherford went cautiously to work and, having thought out a series of practical reforms, which would introduce certain useful changes into the complex machinery which governed the completion of the titles to an estate, and the creation and transfer of burdens upon land, he brought in five bills which formed a compact code of that branch of the law. These bills had been so carefully prepared that they all passed speedily through both Houses, and received the royal assent upon the 25th of June, 1847.

His bill to amend the law of entail was not yet ready ; and before he could produce it the second Parliament of Queen Victoria was dissolved. <sup>2</sup>

As usual, no one ventured to take the field against Rutherford, whose constituents elected him by a show of hands on the 30th of July. On the whole the elections in Scotland were uneventful except at Edinburgh, where Macaulay and

<sup>1</sup> *Considerations on the Polity of Entails in a Nation*, 1765.

<sup>2</sup> July 25, 1847. The Rutherford Acts of 1847 are 10 & 11 Vict. cc. 47, 48, 49, 50, and 51.



Mr. Gibson Craig, the Whig candidates, were opposed by Mr. Blackburn, as a Conservative, and by Mr. Charles Cowan, who stood as a Radical, and was brought forward by the party which had run Sir Culling Eardley Smith twelve months before. After that contest the editor of *The Witness* had said that many who had voted for Macaulay, rather than oppose a member of the Government who was standing for re-election on taking office, would vote for Sir Culling at a general election, being "persuaded that, on the broad grounds of Christian principle and Protestant truth, Sir Culling Smith ought to be the representative of Edinburgh."<sup>1</sup>

But the shrewder members of this party knew that a citizen of Edinburgh would be a far stronger candidate than any stranger; and they proposed Mr. Cowan on the plea that "Christians ought to send Christians to represent them." They received, too, a re-inforcement from another camp. The distillers had for some time been offended with the Government for lowering the customs duty on rum, and refusing them protection against Colonial spirits; and now Macaulay gave additional offence by a curt refusal to vote for a reduction of the excise duty on whisky. This turned against him the spirit merchants and their best customers, many of whom, though Conservatives, split their votes between Mr. Blackburn and Mr. Cowan, in order to secure the defeat of Macaulay. This combination put Mr. Cowan at the head of the poll, with Mr. Gibson Craig second. Macaulay, however, though he lost his seat, was several hundred votes above the Conservative candidate, who suffered from the fact that so many of his supporters, instead of plumping for him, gave their second votes to the Radicals. If the contemporary descriptions of what happened are not too highly coloured, the scene at the west side of the Church of St. Giles, where the hustings stood that year, when, in the name of Christian principle, Protestant truth, and cheap whisky, Macaulay was so cruelly treated, was a melancholy

<sup>1</sup> *The Witness*, July 15, 1846.

exhibition of which fair-minded men must have been thoroughly ashamed.

When the new Parliament met, on the 18th of November, the Whigs and Radicals who made up the Liberal party, and the Protectionists and Free Traders into whom the Conservatives were now divided, were so evenly balanced that Lord John Russell remained in power only by favour of the Conservatives who followed Sir Robert Peel; but the Government's strength in Scotland had been somewhat increased by the elections, and the Lord Advocate could also depend on the bulk of the Conservatives to help him with his entail bill, which was nearly ready at the beginning of the session, and which Sir George Grey, the Home Secretary, announced would be brought in at an early date.<sup>1</sup>

Impetuous reformers, who could never hear the wisdom of an old custom called in question without immediately wishing to abolish it off-hand, had been agitating for a law to make entails illegal in future, and had even proposed that all the entailed estates should be disentailed at one stroke. The first cause of entails—the desire to preserve a family from generation to generation—lay deep in human nature. But, as old Lord Kames said, “Men will always be mending, and when a lawyer ventures to tamper with the laws of nature, he hazards much mischief”; and the original entail Act of the seventeenth century had done immense harm by the artificial help it gave to the natural forces which were always working in Scotland for the protection of property in land.<sup>2</sup> Nevertheless, though Parliament could, if it pleased, upset all the title deeds under which estates were

<sup>1</sup> *Hansard*, xcv. 211. At the general election of 1847 the Scottish counties returned eighteen Conservatives and twelve Liberals; the towns twenty-two Liberals and one Conservative—Lord Lincoln (afterwards the 5th Duke of Newcastle), who was elected for the Falkirk district as a “Liberal Conservative.” The members for seven of the counties were also Liberal Conservatives, or “Peelites.” In a letter to the Queen Lord John Russell describes the defeat of Macaulay as “disgraceful.” Nothing like it, he thought, had occurred since the rejection of Mr. Burke by the city of Bristol in 1780. *Letters of Queen Victoria*, August 5, 1847.

<sup>2</sup> More than 2,000 deeds of entail were registered in Scotland between 1685 and 1848.

held, and disinherit every heir in the country, Rutherford did not see in the abuses of the entail law any reason for throwing a whole system of tenure into the melting pot. His object was, not to bring about a sudden revolution, but to facilitate the fair and legitimate use of land by the introduction of certain gradual changes, which might ultimately rid Scotland of what he called "an absurd and preposterous system, which had been the curse of the country for a hundred and sixty years."

He used these words when, on the 24th of February, 1848, he explained his proposals, in moving for leave to bring in the bill.<sup>1</sup> He made it clear at once that he had resolved to protect the interests of heirs who had a reasonable expectation of succeeding to entailed estates. But those whose interests were shadowy and unsubstantial, those who could scarcely expect to succeed, were in a different position; and Parliament, he said, must be prepared to allow them to be cut off, if anything like an adequate remedy for the evils caused by entailing was to be supplied.

It is now more than sixty years since Lord Advocate Rutherford brought in his bill, and the country has been long familiar with the idea of breaking an entail; but in those days it was a startling novelty. The statutes which had been passed to alleviate the effects of the Act of 1685, had all been framed on the assumption that the perpetuities created by deeds of entail could not be touched. Rutherford's bill, by giving the heir in possession power to disentail, in certain circumstances, introduced a new element into the law. He did not attempt to alter the form of deeds of entail, or to make any change in the mode of maintaining perpetuities; but, for the first time, power was given to break an entail. The distinction which he drew between old entails, created before the 1st of August, 1848, and new entails, created after that date; the large power of disentailing given to an heir succeeding under a new entail; and the provisions by which

<sup>1</sup> *Hansard*, xevi. 1307.



an heir succeeding under an old entail might break it, on obtaining the consent of certain of his possible successors ; were all devised for the purpose of gradually diminishing the number of entailed estates, and of discouraging, for the future, the custom of attempting to create perpetuities.

In addition to these provisions, now so well known in Scotland, but at that time regarded as bold and perhaps rash experiments, the bill made some further amendments of the law. It increased the power of the heir in possession to make provision for his family, and to sell portions of his estate for the payment of debt, and also gave him the right to grant long leases, with the same consents as those which would authorize him to disentail. The Rosebery Act had given the heir in possession power to make exchanges of land, and this power was now to be extended. As the law stood, the heir in possession could only charge on the estate three-fourths of any sum he had spent on the improvements permitted by the Montgomery Act. Rutherford proposed to make the sum a charge on the estate for twenty-five years, so as to enable a proprietor who wished to improve his property to go into the market, and raise the whole sum on the security of his land.<sup>1</sup> By the Act of 1685 a deed of entail must contain three cardinal prohibitions : a prohibition against any alteration in the order of succession, a prohibition against any alienation of the estate from the heirs named in the deed, and a prohibition against burdening the estate with debt. Rutherford's bill provided that a deed of entail which was defective in any one of these essential prohibitions was to be held defective in all, a provision destined to set free many Scottish estates.

The bill, having passed its first and second readings with-

<sup>1</sup> Lord Advocate McNeill had put into the Clauses Consolidation (Scotland) Act of 1845 a provision giving proprietors of entailed estates power to use money received as compensation from railway companies in paying off charges for improvements made under the Montgomery Act, or for provisions for widows and children under the Aberdeen Act. In the opinion of Rutherford, the result of the Montgomery and Aberdeen Acts was that most entailed estates in Scotland were encumbered a short time after they passed.



out debate, was sent to a select committee<sup>1</sup>; and, after the report had been received, it went smoothly through the House of Commons till the 8th of June, when it was read a third time, and passed.<sup>2</sup>

Next day it was read a first time in the House of Lords without debate. But when Lord Campbell moved the second reading (June 29) the Duke of Buccleuch said that, though he would not divide the House against the bill, "he must state his opinion that there had never been brought under their Lordships' consideration any measure of so sweeping a character as this, affecting the possession and inheritance of property in Scotland." He admitted that entails were unpopular in Scotland, but thought they were beneficial, because they had "protected property which would otherwise have been split into small portions."

The Duke of Argyll, who was equally hostile, said that the clamour against the law of entail "had been raised by those who knew little or nothing of its working."<sup>3</sup> Other opponents were Lord Haddington, who said, at a later stage,<sup>4</sup> that the bill "trampled on vested rights," and Lord Brougham, who declared that neither his recollection nor his reading afforded him an example of so vast a change

<sup>1</sup> Some petitions were presented in favour of the bill, and one against it from the magistrates of St. Monance in Fifeshire, who prayed "that another bill may be brought in to abolish entails already existing, and to declare that future entails, in whatever form, shall be illegal; or at all events to declare that past, present, and future entails shall have no effect in protecting property from the lawful debts of the proprietors, which the present Bill has left entirely untouched, and which they (the petitioners) consider is one of the chief boons to the community for which a Bill of that description should provide."

<sup>2</sup> *Hansard*, xcix. 502. The Scottish Members had to take this bill in the middle of the night. Rutherford rose to make his first explanation at midnight (February 24), the report from the select Committee was presented at 12.30 a.m. (May 25), when the whole House went at once into Committee, ran through it all (with two divisions) and rose at 1.15; and the report stage, which passed without debate, came on at midnight (June 2). There was neither debate nor division on the third reading.

<sup>3</sup> *Hansard*, xcix. 1306.

<sup>4</sup> In Committee, July 17. *Hansard*, c. 507.

in the law of property. But the general feeling of the House was so strong in favour of the bill that it was allowed to pass into law. Four peers, however, entered a solemn protest against it: "Because to sanction this very great change in the law of succession to landed property in Scotland, and this extensive invasion of the rights of parties having vested interests, without any adequate necessity, will hereafter form a dangerous precedent, and is inconsistent with the character this House has ever maintained as the guardian of such rights and interests."<sup>1</sup>

When Parliament rose, on the 5th of September, the Queen's Speech contained a paragraph expressing satisfaction that the Entail Bill had passed. In Scotland it was well received. There were, of course, some misgivings. So many estates, it was predicted, would be sold that land would be of little value; ancient Scottish families would die out; their homes would fall into the hands of rich and vulgar upstarts from the other side of the Tweed; and the old charm and the old traditions of country life would vanish. The prevailing opinion, however, was that a great boon had been conferred on the agricultural interest, and on the possessors of entailed estates, many of whom were in danger of seeing their lands fall into the condition of those properties in Ireland to relieve which the Encumbered Estates Act had to be passed next year. "The new remedy," said Cockburn, "whether it be good or bad, is entirely Rutherford's. I am not aware that any other Lord Advocate has ever entitled his name to be so exclusively connected with so important a measure."<sup>2</sup>

Next year Rutherford brought in a Public Health Bill, the fate of which, when traced through *Hansard* and the *Journals*, shows how difficult it sometimes was to steer a Scottish measure through the House of Commons.

Very late on the night of the 7th of May, the Lord Advocate moves the second reading. Mr. Forbes Mackenzie, Member

<sup>1</sup> *Lords' Journals*, July 20, 1848. The Rutherford Entail Act is 11 & 12 Vict. c. 36.

<sup>2</sup> *Journal*, ii. 222.

for Peeblesshire, at once moves the adjournment of the debate. The Lord Advocate opposes this. So do Mr. Gibson Craig and Mr. Charles Cowan ; their constituents, they say, are interested in the bill. Sir George Grey supports the Lord Advocate. The House divides, and the motion for the adjournment is defeated. Mr. Charteris<sup>1</sup> rises. There are, he says, nine bills for Scotland on the table, and the people of Scotland are alarmed at "the legislative fecundity of the Lord Advocate." He moves the adjournment. Though there is a Government majority present it is useless to go on ; the Lord Advocate submits ; and they rise long after midnight. Three days pass ; and at the end of a long sitting, the Lord Advocate again moves the second reading. Viscount Drumlanrig<sup>2</sup> says that he objects to smuggling important Scottish measures through at such a late hour. He moves the adjournment. At last the bill is read a second time ; and, on the 1st of June, the Lord Advocate moves to send it to a select committee. Mr. Scott<sup>3</sup> wishes to complain of the way in which Scottish bills are "shuffled upstairs." He knows it is extremely convenient for the English Members, who have everything their own way in the House ; but he would very much like to know why Irish bills are not treated in the same way as those for Scotland are. Then the bill is sent to a select committee ; and after that it disappears, and is heard of no more.

The position of parties in the House of Commons was largely the reason why so little time was found for Scottish business. Though the Peelites had lost almost half their strength at the general election of 1847, they were sufficiently numerous to give Lord John a substantial majority for free trade. On the question of keeping him in office they were not, however, all of one mind. Peel himself and Sir James

<sup>1</sup> The Hon. F. Charteris, afterwards Lord Elcho, who sat for Haddingtonshire from 1847 to 1883, when he succeeded to the Earldom of Wemyss.

<sup>2</sup> M.P. for Dumfriesshire from 1847 to 1856, when he became Marquess of Queensberry.

<sup>3</sup> The Hon. F. Scott, M.P. for Berwickshire, 1847-1857.

Graham were bent on supporting the Government so long as there was any danger of a return to protection. But other Conservative free traders thought that a death blow would be given to the hopes of the protectionist party in the country if there was a change of Ministry; for they believed that the protectionist leaders, however loudly they might call out against free trade when in opposition, would quietly accept it if they were themselves in office.

The situation of the Ministers, thus dependent on the Peelite vote, was therefore precarious; and, with no solid party majority behind them, they had to allot the work of the House in a way which left very little time for purely Scottish business. If, for instance, an important Public Health Bill for England had been brought in, a Cabinet Minister would probably have been in charge of it. The Government would have had to consider the convenience of four hundred and sixty-nine English members; and, instead of being hurried through in the small hours of the night, it would have been discussed during several afternoon and evening sittings. The Irish Members had also to be conciliated; for they were one hundred and five strong, and though O'Connell was now off the scene, some other voice might say that if the Parliament at Westminster could not find time for Irish business, a Parliament in Dublin could, and so renew the agitation for repeal. But there were only fifty-three Members for Scotland; and of these more than one-half could be depended upon to give no trouble. Therefore the affairs of Scotland were of very little interest to the Cabinet.

The Lord Advocate was virtually Minister for Scotland; and Rutherford, who had to bear on his own shoulders the whole weight of Scottish business, about which most other members of the Government knew little and cared less, would never have carried through so many useful measures if it had not been for the extraordinary trouble he took in preparing them. His Conveyancing Acts of 1847, and the Entail Act, were conspicuous examples of his thoroughness;



and it was the same with all his work in Parliament. Knowing that hasty legislation must be slipshod, he would never move till he saw his way clearly. If the whole of Scotland was clamouring for some reform, he would keep the whole of Scotland waiting till he was quite sure how that reform could be best accomplished. Before bringing in a measure, he pondered over it in his study, and seldom spoke about it in public. He thought everything out beforehand, anticipated objections instead of waiting till they were sprung upon him in the House of Commons, consulted those whose interests might be touched, and, like Peel, made it a point of honour to take endless pains in drafting his bills so that they might pass with few amendments.

In the session of 1850 there was a typical instance of how these methods worked. On the 1st of March he brought in an elaborate bill for regulating the police in towns and populous places in Scotland—a very much needed reform—full of minute regulations for improving the system of paving, cleaning, draining, and lighting. It contained nearly four hundred sections, and affected the local interests of many large and small towns. But Rutherford had drafted it with such care that it went through with scarcely any debate or amendment; and Mr. Hume, “one of the fairest men in the House of Commons,” as Lord Robert Grosvenor once called him, but the most severe critic who sat there, said he wished every bill which came before the House was equally well considered. “The Lord Advocate,” he said, “by the great attention he has paid to the suggestions offered him, has saved a vast deal of time to the House, and also completed a very satisfactory measure.”<sup>1</sup>

This bill<sup>2</sup> passed its third reading in the House of Lords on the 4th of July. But the end of Rutherford’s career in Parliament had already come. On the 16th of May he answered a curious question put to him by Sir Frederick Thesiger during one of the many debates on Mr. Stuart Wortley’s Marriages Bill; and that was the last time he rose

<sup>1</sup> *Hansard*, cx. 1278.

<sup>2</sup> 13 & 14 Vict. c. 33.

in the House of Commons.<sup>1</sup> He had now held for some years what Dean Boyle calls "A unique position as Lord Advocate and Member of Parliament." His occupations and interests, however, were not confined to law and politics. He had become known in London as something more than a mere lawyer and party man. In 1847 Grillion's Club resolved to elect two new members every year; and next year Rutherford was admitted to that attractive society, in the list of whose members he is described as "eminently distinguished for his learning and literary attainments." He was a member of the Royal Commission on the British Museum, where he had a congenial friend in Panizzi, with whom he had been on very intimate terms for some years before the Commission was appointed. He was never, of course, a man of letters, as Jeffrey was; but he loved to surround himself with books, and in his library rare editions of the classics, Baskervilles, all the publications of such clubs as the Abbotsford, the Maitland, and the Bannatyne, a remarkably complete set of Defoe's works, and a quantity of general literature found a place in company with Stair's *Institutes*, the Law Reports, and the public general statutes. In the midst of all his labours he found time for a great deal of miscellaneous reading. During the winter of 1848, when he was busy with his Entail Bill, the first two volumes of Macaulay's *History* were published. Rutherford devoured every word of them eagerly, and was "overwhelmed with admiration." He gloried in the vindication of the Whigs, and probably wrote one of the numerous letters of congratulation which Macaulay received when the first portion of his task was completed.

So busy a man had to indulge these tastes at odd moments. Junior counsel and law agents entering his study for consul-

<sup>1</sup> *Hansard*, cxi. 146. Sir Frederick Thesiger's question was whether, by the law of Scotland, an illegitimate son could marry his father's widow, and also his own sister! The *Law Review* had asserted this. "If so," it said, "the Scotch, who are said to evince such a horror at the bare idea of rendering it lawful for them to marry their deceased wives' sisters, are indeed straining at a gnat while they complacently swallow a camel, and a dromedary or two into the bargain."

tation often noticed that he laid aside some Greek or Italian book which he had been reading.<sup>1</sup> His knowledge of Greek was quite remarkable; and he would often amuse his friends by quoting long passages from the most difficult authors. But Italian was his favourite study. Dean Boyle was told by Sir James Lacaita that Mr. Gladstone and Rutherford were "the only two Englishmen he had ever known who could conquer the difficulty of obsolete Italian dialects."<sup>2</sup> The library at Lauriston was decorated with the portraits of nine famous Italians which had been copied for him from the originals—Petrarch, Boccaccio, Poliziano, Michael Angelo, Leonardo da Vinci, Dante, Galileo, Machiavelli, and Raphael; and on the bookshelves were many Italian works, among which there were no fewer than nine editions of the *Decameron*, from 1516 to Pickering's edition of 1826. In collecting these he had the useful help of Panizzi, with whom he must have had many talks on Italian literature, and on the prospects of Italian liberty, for which Panizzi was always working in concert with his English friends.<sup>3</sup>

Like many of those who delight in possessing rare books, Rutherford seems to have been fond of collecting odd pieces of sculpture, marble busts of Greek gods and goddesses, old silver, valuable china, and curios, such as a rare bronze bust of Napoleon, one of a few copies made for the French Government, to obtain which he sent all the way to Paris. He also made a collection of paintings by Scottish and English artists, and of copies from the Italian, Dutch, and Flemish schools. One at least of his paintings was of value—the

<sup>1</sup> His nephew, the late Lord Rutherford Clark, told me this.

<sup>2</sup> "The late Lord Arthur Russell, many years after Lord Rutherford's death, gave me, in letters which I still possess, much curious information as to some out of the way Italian books which Rutherford was fond of reading and quoting."—*Reminiscences of Dean Boyle*, p. 25.

<sup>3</sup> Sir Anthony Panizzi was appointed Keeper of the printed books in 1837, two years before Rutherford entered Parliament. In the catalogue of Rutherford's Library in the British Museum there is pasted a letter from Mr. Thomas Nesbit of Edinburgh (the auctioneer who sold the collection), saying that he sends it as a memorial of "your friend Lord Rutherford." They corresponded for years on public and private matters, and Panizzi's last letter was written when Rutherford was on his deathbed.

portrait by Rubens of Sir Theodore Mayerne, which he bought in the Spring of 1847 at Lord Bessborough's sale.<sup>1</sup>

But for these pursuits his busy life had left him very scanty leisure ; and hard work was wearing him down. An enormous practice at the bar, severe application to official work, constant journeyings to and from London, late hours in the House of Commons, and the vexations from which no one who has a large amount of patronage in his hands can escape, had been gradually undermining his strength. At the beginning of the year 1851, he was taken seriously ill ; and when Parliament met in February, he was not in his place. On the 30th of March, Lord Moncreiff died ; and the vacant judgeship was taken by Rutherford, who made his appearance on the bench on the 23rd of May. Next year he suffered from the same ill fortune which had kept him out of the Lord President's chair in 1841.<sup>2</sup> In February (1852) the Russell Government went out, and was succeeded by that of Lord Derby, which remained in office for less than one year. Three months after the Conservatives came in, Lord President Boyle retired, and McNeill, who a year before had resigned his seat in Parliament for a judgeship, was promoted to be head of the court. If the Whig administration had lasted for just three months longer, Rutherford would have been made Lord President. It was, of course, a disappointment ; but he bore it well, " as a man of sense and spirit might," says Cockburn.

Before and after he went on the bench Rutherford, when not in London, lived during the winter in Edinburgh, at

<sup>1</sup> Sir Theodore Turquet de Mayerne was physician to James VI and Charles I and II. Walpole mentions this painting, which he calls " certainly one of the finest extant," among the works of Rubens known to have been executed in England (*Anecdotes of Painting*, i. 309). The chief portraits of Rutherford may be mentioned. There is one by Watson Gordon in the Town Hall at Leith ; another by the same artist in the Scottish National Gallery ; and a third, by Colvin Smith, is in the Parliament House, where there is also a bust by Brodie. The portrait in the Parliament House was lent by Lord Dalhousie (the Fox Maule of the disruption days) to the Faculty of Advocates.

<sup>2</sup> *Supra*, p. 83.



9, St. Colme Street, and in summer at Lauriston Castle. Though never a gourmet like Lord Murray, he kept an excellent cellar, and liked having interesting people about him. "He told stories admirably, and, without any ostentation, gave you the results of reading, and his really wonderful scholarship," says Dean Boyle, who describes a luncheon party at Rutherford's, where he met Thackeray, who was lecturing in Scotland. "I have never seen Thackeray so much at his ease," the Dean says; and their talk must have been worth hearing, for the guest was on familiar ground with Dryden, and Marlborough, and Pope, whence they went on to criticisms of Carlyle, Dickens, and Tennyson.

Then there was the society of the Whig veterans, men older than Rutherford but with whom he lived on easy terms for many years. Lauriston was not far from Craigcrook, where Jeffrey lived, and Cockburn sometimes came from Bonaly, and Moncreiff from Edinburgh, with his gruff voice and formal, old-world courtesy of manner, and Murray, turning very fat as the years rolled on, but still as genial and shrewd as ever. They had no Boswell among them taking notes; but their conversation could not flag, even if it never went beyond old stories and local doings—the nights, so very long ago for some of them, under the wax candles at the Speculative, some joke of Sydney Smith's, the Pantheon meeting, the times of the Reform Bill. We can imagine the older men fighting their battles over again in the dining-room at Lauriston, on a summer evening, while their host saw to it that the claret and the port, to which Moncreiff and Cockburn did full justice, went round, and the ladies waited with early Victorian patience in the drawing-room till the sun went down beyond the windings of the Forth,—*σκιόωντό τε πᾶσαι ἀγῆται*.

Amongst younger men Rutherford did not cultivate many intimacies; but he had a band of chosen friends who were devoted to him. He was a popular member of the convivial Friday Club, which Cockburn had founded in 1803.<sup>1</sup>

<sup>1</sup> Rutherford was admitted in 1816.

In January, 1835, Cockburn, who had long been secretary, writes, "In November, 1834, the King rewarded my twenty-eight years' service to this Club by making me a Senator of the College of Justice. This prevented me from mingling any more among the crowd in the Outer House, and there arranging our social parties, and besides, it was beneath the dignity of a supreme judge to be adjusting tavern bills. I therefore abdicated, and of my own authority named Andrew Rutherford my successor. Fortunate youth! thy character, thy fiery eye, thy morocco books, thy eloquence, thy bits of virtu, thy law, thy deep voice, thy virtues, even thy glorious debauchery, thy generous profligacy, will all be forgotten. But this honour! thy election by me, to be the Recording Angel of the Immortal Friday, this shall endure. Consuls have marked years—flavours vintages—discoveries epochs—cooks sauces—druggists doses, but henceforth thy eternal name blazes on the Friday."<sup>1</sup>

The Friday Club was mainly Whig; but John Wilson was the man who probably stood first amongst Rutherford's friends. If Blackwood had given no quarter to the Whigs, nor received any from them, if there was rather savage warfare in the old days, the Blackwood men were gallant warriors fighting their hopeless battle in defence of the old citadel against fearful odds, and Wilson was the noblest Roman of them all. Between Rutherford and him there was a long and affectionate understanding, which was never disturbed by the turmoil of party strife. "The mutual appreciation and familiar intercourse of Wilson and Rutherford," Mrs. Gordon, Wilson's daughter, says, "was as instant as are question and answer to-day by telegraph; and I cannot now recall without emotion the fond and constant attachment which the great and busy lawyer felt and manifested for 'Christopher North.'"<sup>2</sup>

<sup>1</sup> *Book of the Old Edinburgh Club*, iii. 124. In this volume Cockburn's MS. history of the Friday Club was printed (June, 1911), for the first time, by his grandson, Mr. Harry A. Cockburn.

<sup>2</sup> Mrs. Gordon was the wife of John Thomson Gordon, Rutherford's nephew.

But within the space of four years this circle was broken up. Jeffrey was the first to go. He died in January, 1850. In the summer of that year, in closing his history of the Friday Club, Cockburn wrote, "we have not met for some years. Our Secretary, Lord Advocate and M.P. Rutherford, has allowed the contemptible cares of a senator and public accuser to interfere with his honourable duties as Secretary of the Friday . . . Jeffrey's health made his attendance impossible. So we have hung on—recollecting the past, and indulging in vague dreams of revival, till at last Jeffrey's death, last February, seems to me to terminate the club. . . . Let it go—it is a type of life, of which the brightest scenes close; and which, though they may be renewed in other generations, it is in vain to cling to after that autumn has plainly arrived."

Next year came the death of Moncreiff, when Rutherford went on the bench. In October, 1852, after thirty years of married life, Mrs. Rutherford died, a day, Mrs. Gordon says, of "startling sorrow" to Wilson; and in April, 1854, Wilson himself and Cockburn both died.

Rutherford's health, which his friends had noticed was seriously affected by the death of his wife, now failed completely. He was dangerously ill for some months; and during the night of the 13th of December, 1854, he died at St. Colme Street, Edinburgh, in his sixty-third year. When the judges met next morning the Lord President announced that the business of the court would be adjourned. "Our deliberations," he said, "have been disturbed last night and this morning by a calamity which has befallen the court, whereby it has been deprived of one of its brightest ornaments. I allude to an event of which the bar must have already heard—the death of a distinguished member of the court, one of the greatest advocates that ever practised at the bar, and one of the most able and learned judges that ever adorned the bench."

On the death of his wife, Rutherford had erected in the Dean Cemetery at Edinburgh a pyramid of red granite, on which were engraved these touching words, "uxori

desideratissimæ contra votum superstes moerens posuit Andreas Rutherford et sibi, MDCCCLII." There, on the 20th of December, 1854, he was himself buried, close to the graves of Jeffrey and Cockburn, and not far from those of Moncreiff and Christopher North.



## CHAPTER III

### DUNCAN McNEILL

IN the early years of the eighteenth century the islands of Colonsay and Oronsay, in the Hebrides, were acquired from Archibald Duke of Argyll, in exchange for other lands, by Donald McNeill, one of the many Highland lairds of that name. His great-grandson sold the islands to a cousin, John McNeill, who married Hester, daughter of Duncan McNeill of Dunmore, and had a family of six sons, of whom Duncan, born in August, 1793, was the second, and three daughters.

Life in Colonsay at that time must have been very primitive. There were no roads. The old mansion of Kiloran, built on the site of a Culdee chapel, was the only big house on the island ; and there the family lived, surrounded by their tenantry, numbering about seven hundred souls, over whom the laird ruled in patriarchal fashion. Throughout the Highlands and Islands of Scotland the population was far in excess of what the soil was capable of supporting ; and, in spite of frequent emigrations, it was constantly increasing. The result was universal poverty. There is no reason to suppose that the people of Colonsay were better off than their neighbours in Jura, Mull, or Isla ; and in these barren wastes it was impossible for so many people to make a decent living. John McNeill, however, did what he could to develop the resources of his property. It consisted chiefly of bleak hills covered with heather, moss, and rocks ; but in some parts the soil was fertile, and there he made experiments in farming and breeding cattle with considerable success.

In ancient days a Lord of the Isles had brought a band of monks of the Order of Saint Augustine from Holyrood to Colonsay, where he founded an abbey, of which some ruins still remained, and in Oronsay, as in the better known island of Iona, there were other relics of early Christian times ; but for many years the religious instruction of the islanders had been neglected, and, though a church was built in Colonsay towards the end of the eighteenth century, the only services were those held by a minister who came now and then by boat from Jura. The Society for the Propagation of the Gospel had established schools ; but the teaching was in Gaelic, and the young McNeills were educated at home. "Mrs. McNeill was a remarkable woman, far-seeing, and, it is said, ambitious for her handsome sons. It was her task to educate them till they went to college, and right well she must have done it."<sup>1</sup> But it is unlikely that Duncan had more than a very scanty stock of knowledge with which to begin a college life when, in the autumn of 1805, he sailed with his father and his eldest brother, Alexander, to Glasgow (which they reached on the day when the news of the battle of Trafalgar arrived), and journeyed thence to St. Andrews, where the two boys were enrolled as students at the University.<sup>2</sup>

He was only twelve years old. Lord Campbell and Chalmers had gone to St. Andrews at about the same age ; and we are told how little knowledge they took with them.<sup>3</sup> Chalmers could hardly write or spell ; and Campbell, though he had been well grounded in Latin at the Grammar School of Cupar, was almost totally ignorant of Greek. "The Greek professors," he says, "had to begin by teaching their pupils the letters of the Greek alphabet" ; and Duncan McNeill, though he may have had a smattering of Latin, probably began his Greek studies by humbly learning the alphabet. In his first session he attended the junior Latin

<sup>1</sup> *Memoir of Sir John McNeill, G.C.B.*, 1910, p. 6.

<sup>2</sup> *Matriculation Roll of St. Andrews* (edited by Dr. Maitland Anderson, 1905).

<sup>3</sup> *Memoirs of Chalmers*, i. 10 ; *Life of Lord Campbell*, i. 14.

and Greek classes. Next year he took his place amongst the senior students, and also attended lectures on Ethics and Mathematics. He is said to have distinguished himself in Mathematics, which were at that time little thought of at St. Andrews <sup>1</sup>; and he took the degree of M.A. in 1809.<sup>2</sup>

On leaving St. Andrews he went to study law at the University of Edinburgh, where he joined the Speculative Society in 1813; and, having worked for a time in the office of Mr. Michael Linning, Writer to the Signet,<sup>3</sup> where he was initiated into those mysteries of Court of Session procedure about which Alan Fairford heard so much when he was counsel in the great case of *Peebles against Plainstones*, he passed to the bar on the 1st of June, 1816. His practice was at first chiefly in the criminal courts. He gained great credit as one of the junior counsel for the accused in a *cause célèbre* which had been exciting public interest for some years. His client, a bank robber, was duly hanged; but the judges paid McNeill a high compliment for what they called his "masterly argument" in support of certain preliminary objections to the indictment which had been raised for the defence.<sup>4</sup> Soon after this, Sir William Rae, who was then Lord Advocate, appointed him one of his advocates depute; and next year he was one of the Crown Counsel who were engaged in the prosecution of James Stuart for killing Sir Alexander Boswell of Auchinleck in a duel.<sup>5</sup>

<sup>1</sup> "Mathematics," Lord Campbell says, "were in very low repute, and it was not thought at all disgraceful entirely to neglect them."

<sup>2</sup> His name is not in the published list of graduates; but Dr. Maitland Anderson, Librarian to the University, informs me that in a list drawn up by a former Librarian and headed, "Not entered in Minutes and not printed in Calendar," the name of "Duncan McNeill, 1809," occurs.

<sup>3</sup> Afterwards Secretary of the Committee formed to promote the erection of the "National Monument" which still remains unfinished on the Calton Hill.

<sup>4</sup> This was at the trial, in June, 1820, of James Mackcoull, or Moffat, for robbing the Union Bank at Paisley. Several accounts of this extraordinary case have been published: *Memoir of the Life and Trial of James Mackcoull*, Edinburgh, 1822; Mackenzie's *Reminiscences of Glasgow and the West of Scotland*, p. 400; Kay's *Original Portraits*, ii. 354.

<sup>5</sup> *Trial of James Stuart, Esq., younger, of Dunearn, before the High Court*

† In 1824, when he had been only eight years at the bar, he was appointed Sheriff of Perthshire. A staunch adherent of the Tory party, he had apparently lost all chance of further promotion when, on the fall of the Wellington Ministry, the Whigs gained the ascendancy which was expected to last for many years. But the tide turned in 1834, when Sir Robert Peel came in. McNeill, while still best known as a criminal lawyer, had now a large practice in the Court of Session, and in appeals to the House of Lords; and, though junior to Patrick Robertson and other men of good standing at the bar, he was appointed Solicitor-General, which office he held till April, 1835, when the Whigs formed the second Melbourne administration. His business increased, both in the criminal and the civil courts. At the trial of the Glasgow cotton spinners, in 1838, he and Robertson led for the prisoners; and in any civil case where witnesses were to be examined, or a jury to be addressed, McNeill was almost as popular a counsel as Robertson.

In September, 1841, after the great Conservative victory at the general election of that year, he became Solicitor-General for the second time; and on the death of Sir William Rae, in October, 1842, he succeeded him as Lord Advocate. Next year he was made Dean of Faculty, and for the next nine years was annually re-elected by the bar.

Sir William Rae's death made a vacancy in Buteshire, and the new Lord Advocate was spoken of as a probable candidate. Mr. Stuart Wortley's influence, however, secured the seat, for which he was returned on the 2nd of December, (1842). McNeill was not in Parliament during the session of 1843; but he drafted the "Benefices Bill," which Lord Aberdeen brought in after the disruption.

It will be remembered that Lord Chancellor Cottenham and Lord Brougham had said, in deciding the Auchterarder case, that the minister presented by the patron

*of Justiciary in Edinburgh, on Monday, June 10, 1822.* The peculiar circumstances of this case, and the questions regarding the office of Lord Advocate to which it gave rise in the House of Commons, are explained in *The Lord Advocates of Scotland, etc.* (1883), vol. ii. pp. 272-282.



must, by the law of Scotland, be admitted to the living if he was found qualified in life, doctrine, and literature. Lord Aberdeen's bill, however, now declared that, by the law of Scotland, the people might state objections of all sorts, and that the presbytery might reject the presentee on account of their objections. Lord Lyndhurst, who was now Lord Chancellor, at once perceived that to admit that this was the law of Scotland was to admit that the House of Lords had gone astray in the Auchterarder case ; and when Lord Aberdeen was explaining his measure he said to a peer who was sitting near him, " Damn the fellow ! What does he bring in such a bill as this for ! I don't see why I should support anything so absurd." <sup>1</sup> When the debate on the second reading was reached, Lord Rosebery defended the Free Church party, proposed legalizing the Veto Act, and moved the rejection of Lord Aberdeen's bill. Lords Cottenham and Brougham also opposed it, and said that if the bill declared the real law of Scotland the Auchterarder case ought to be re-heard. Lord Campbell called the bill an insult to the House as a court of appeal ; and an incident which took place in connexion with another Scottish measure gave him an opportunity of attacking the Lord Advocate.

At that time the law of Scotland did not recognize the principle of representation in cases of intestate succession to movables. For instance, surviving children succeeded to the exclusion of grandchildren whose parents had died before the succession opened ; and in the session of 1843 a bill to alter this, and assimilate the law of Scotland to that of England and most other countries, had passed the House of Lords. But when it came down to the Commons, Sir James Graham, the Home Secretary, withdrew it on the ground that the Lord Advocate did not approve of the proposed change. It did not appear why McNeill opposed this bill, which was supported by a majority of the judges and the bar in Scotland ; and next day Lord

<sup>1</sup> *Greville Memoirs*, October 31, 1843.

Campbell complained of what had been done. "I understand," he said, "that the opposition originated with the present Lord Advocate, who has not a seat in Parliament. That learned Lord is said to be the author of the bill respecting Scotch Benefices introduced by the noble Lord, and a greater mass of absurdity and bad legal drawing I never saw." The Benefices Bill, however, passed the House of Lords, though there can be no doubt that if it declared the law of Scotland correctly the judgment in the Auchterarder case had been pronounced by Lord Chancellor Cottenham and Lord Brougham on erroneous grounds.

In the House of Commons the second reading, moved (July 31) by Sir James Graham, was opposed by Rutherford, who said that till patronage was abolished, or some form of popular control given, the Scottish people would never be satisfied. He warned the Government that they were mistaken if they supposed the bill would reconcile them to the Church. Its only effect, he thought, would be to deprive the Church of any claim it might still have on the affections of the parishioners. The second reading was, however, carried by a majority of 18. The bill passed at the fag end of the session, and received the royal assent on the 17th of August.<sup>1</sup>

Before Parliament met again the Lord Advocate had obtained a seat in the House of Commons. Campbell of Monzie, the Member for Argyllshire, was sitting beside Chalmers when the moment came for leaving the General Assembly on the 18th of May, 1843. "Come awa noo, Monzie," said Chalmers, and they went out together. Mr. Campbell was a man who never did anything by halves. His daring horsemanship, when steeplechasing or riding to hounds, was long remembered in Warwickshire. On his father's death he at once left the 15th Hussars, threw himself enthusiastically into managing the family estates in Argyllshire

<sup>1</sup> 6 & 7 Vict. c. 61. The Benefices Act of 1843 regulated the admission of ministers till 1874, when patronage was abolished. "The bill," Mr. Greville says, "did no sort of good, and only seemed to drag the House of Lords through the dirt,"

and Perthshire, and impoverished himself by the reckless scale of his expenditure. He was a keen sportsman, and so well known as one of the best shots in the Highlands that, when Queen Victoria visited Scotland in 1842, he was chosen to show the Prince Consort some deerstalking in Glenartney.<sup>1</sup> He threw himself into the cause of the Non-intrusionists with unbounded ardour, entered Parliament to support them, left the Establishment with them, subscribed largely to the funds of the Free Church, built a wooden church in his park at Monzie, which was ready for use within a few weeks after the disruption, and also bought another church which was for sale at the neighbouring town of Crieff, and gave it to the Free Church congregation there. His mortification at the treatment which the Non-intrusion party received from Sir Robert Peel and the Conservative Government was intense. He declared that nothing would induce him to sit with them or vote with them any longer; and on the day of the disruption he wrote a letter to his constituents intimating his retirement from the House of Commons. This opened the way for McNeill, who was returned for Argyllshire on the 8th of September, 1843.

With the exception of Sir James Graham's bill for the creation of new parochial districts, no very important measure relating to Scotland was passed during the session of 1844.<sup>2</sup>

<sup>1</sup> Prince Albert had to leave early in the day to keep an engagement with the Queen. My father told me that when he asked Mr. Campbell what he thought of the Prince he replied, "He's a poor milksop, tied to a woman's apron strings!"

<sup>2</sup> 7 & 8 Vict. c. 44. The Home Secretary had consulted the Lord Advocate about this bill (which was meant to facilitate Church extension and settle the questions raised in the Stewarton case, *supra*, p. 89) nearly a month before the disruption (Parker's *Sir James Graham*, i. 390). McNeill's speech explaining it (June 7, 1844) will be found in *Hansard*, lxxv. 398. Buchanan condemns it on the ground that it "confirms and ratifies, in matters the most purely ecclesiastical and spiritual, the supremacy of the courts of law" (*Ten Years Conflict*, ii. 462). However, as a practical means of Church extension, it worked very well. To show the need for legislation, Lord Dunmore said in the House of Lords (June 28, 1844), that in his part of the Highlands there were only four clergymen to a population of sixteen thousand.

But next year McNeill left his mark on the statute book. He was the author of three elaborate measures, regulating the management, the liabilities, and the powers of public companies<sup>1</sup>; and his Conveyancing Acts<sup>2</sup> began, in that branch of the law, the reforms which Rutherford afterwards continued on a larger scale. His chief piece of work, however, was that important statute from which dates a new era in the history of the Scottish laws relating to the poor.

The system which he now changed was simple, and popular in Scotland. There was no central authority to superintend the distribution of relief among the poor; and that matter was left entirely in the hands of local authorities. The area of administration was the parish. In parishes lying within a royal or parliamentary burgh (burghal parishes) the magistrates were the authorities, and in parishes outside such burghs (landward parishes), the office-bearers of the Church and the landowners; while in parishes which were partly "burghal" and partly "landward" the Church, the landowners, and the magistrates shared the responsibility.

The poor were assisted chiefly by church door collections. In most of the Scottish parishes there were no poor rates. In the reign of James VI, an Act was passed which gave the impotent poor a right to ask for help and authorized the magistrates to raise the necessary funds by assessments<sup>3</sup>; but for a long time none were levied. Until the year 1700 only three parishes were assessed. By the end of the eighteenth century the number had risen to about ninety. In some parishes, owing to the secessions caused by the Patronage Act of Queen Anne, dissenters were numerous; and it was complained that, though they did not contribute to the collections, they expected the Church to support the paupers of all sects.

<sup>1</sup> *Companies Clauses Act*, 8 & 9 Vict. c. 17; *Land Clauses Act*, 8 & 9 Vict. c. 19; *Railway Clauses Act*, 8 & 9 Vict. c. 33.

<sup>2</sup> 8 & 9 Vict. c. 31; 8 & 9 Vict. c. 35.

<sup>3</sup> *Act for Punishment of Strang and Idle Beggars, and relieve of the Pure and Impotent*; October 20, 1579.



The collections were further diminished by the frequent absence from Scotland of many landowners. The absentee proprietor seldom sent money for the collections, unless warned by his estate manager that his lands were in danger of being assessed for poor rates. During the first years of the nineteenth century it was found, in many places, that the old system of relieving the poor no longer sufficed ; and at the accession of Queen Victoria between two and three hundred parishes were assessed.<sup>1</sup>

By the law of Scotland the only persons entitled to relief were those who, by reason of age and infirmity, were quite incapable of supporting themselves. The able-bodied poor, to whom the law of England gave a claim for help, were by the law of Scotland debarred from relief. Nor was the English custom of giving poor relief in aid of wages known in Scotland. There were few poor-houses. Edinburgh had three. Glasgow and Paisley, both swarming with paupers, had each a "town hospital"; and in some other places there were almshouses. But the Scottish system was "essentially one of out-door relief."<sup>2</sup> It was interwoven with the whole life of the nation, and had done much to maintain the independent and self-reliant character of the people. It was simple and easily understood. It led to few law-suits ; only fifty cases on the poor law were decided in one hundred and fifty years. It encouraged the poor to help the poor, the widow to drop her mite into the treasury, as well as the rich man his rich gift. It promoted frugality and industry. It fostered kindly feelings. It was entirely different from that system which had been the fruitful mother of so much evil in England. For two hundred years there had been compulsory poor rates in England ; and for two hundred years pauperism had steadily increased. There were poorhouses all over England ; and nowhere was a pauper more miserable than in a poorhouse. In England small wages were supplemented by a parish allowance ;

<sup>1</sup> In 1840 there were 236 assessed, and 643 non-assessed, parishes in Scotland.

<sup>2</sup> *Poor Law Commission Report*, Parl. Papers, 1844 [557], xx. i. p. xi.

and it seemed as if a time might come when no poor man in England would object to being known as a pauper.

One great cause of the esteem felt in Scotland for the Scottish system was that there could be quoted in its favour the testimony of two great leaders of opinion, Malthus and Chalmers. The doctrines of Malthus had been closely studied in Scotland. His theory of population, supported by the evidence of hard facts, was probably suggested by the teaching of Adam Smith ; but it was Malthus who first treated the question in a scientific and exhaustive manner. Every educated man had read the two volumes in which he proved that the tendency of population was to outgrow the means of subsistence ; and it was clear that any system which maintained a population by artificial means, and encouraged early marriages among the poor by mitigating the evils which such marriages produced, must be hurtful to the community. This impressed the mind of Chalmers. He spoke of the "mighty stimulus" which State charity gave to population. "All restraint," he said, "is taken off in the way of early marriages ; and the people, abandoned to improvidence, multiply without limit, and beyond the capacity of the parish to find them in profitable employment."

And it was not only as a disciple of Malthus that Chalmers was opposed to a system of State subsidies for the poor. He thought that even the Scottish system went too far, that the relief of the poor should be left entirely to spontaneous benevolence, and that any poor law was a "moral leprosy," which debased the people by creating in the minds of the poor the idea of a public fund, "a great collective treasure," as he called it, on which they had a right to draw. The moment the existence of such a right is admitted, then, he said, "one of two things must follow, either an indefinite encroachment on property, so as ultimately to reduce to a sort of agrarian level all the families of the land," or "the disappointment of a people who have been taught to feel themselves aggrieved, the innumerable heart-burnings which law itself has conjured up, and which

no administration of that law, however skilful, can appease."

Chalmers is often thought of merely as the leader of those who formed the Free Church. But the disruption came towards the close of his life; he died in 1847. His highest title to distinction is that he was an apostle of social reform, whose sanity was such that with the noblest ideals he had no illusions. "The dearest object of my earthly existence," he said, "is the elevation of the common people"; but he knew they would never be raised by the establishment of a great public fund which was to supply their wants. Pauperism, created by the State, would grow by what it fed on; and something more than money, gathered by the tax collector and distributed by the relieving officer, was needed. What was required was the active benevolence of individuals, visiting the homes of the poor, enquiring into their necessities, and giving them sympathy, advice, and warning, as well as money. This was to be carried out by the parochial system, which was not philanthropy, doing things by fits and starts, but a regular working organization, capable of meeting real cases of distress with the proper remedy. The system was well understood in Scotland. Chalmers wrote and worked to maintain it; and the majority of Scotsmen were convinced that if their poor law was capable of improvement, that improvement would not be brought about by introducing any part of the English system, but by developing the principles of Chalmers, when suddenly, in the winter of 1840, Dr. William Pulteney Alison, lately President of the Royal College of Physicians at Edinburgh, and one of the best known doctors in Scotland, published his *Observations on the Management of the Poor in Scotland, and its Effect on the Health of Great Towns*.

This pamphlet was an attack on the theory and practice of the Scottish poor law, written from the standpoint of a town physician. The poverty of Edinburgh and Glasgow, Dr. Alison said, is increasing. Fever, caused by privation, is constantly prevalent amongst the poor of these towns. The Scottish dislike to admit that the poor have a right to relief causes neglect, and thus tends to

spread disease. The English system is better than the Scottish, even in granting relief to the able-bodied poor. Religious and moral education is no remedy for the evils of poverty. Physical comfort is essential to the permanent development, and habitual influence on human conduct, of the higher feelings. Christianity cannot elevate the masses unless material assistance comes first. All experience shows that every civilized country must have a surplus population ; and those countries which have a more regular system of poor laws than Scotland has are better able to keep destitution under control. In Scotland, therefore, there should be some public authority to enforce the poor laws ; there should be compulsory poor rates ; there should be a complete system of poorhouses ; and the able-bodied poor should receive support when out of work.

So many facts were produced to prove the unhealthy state of the great towns that the pamphlet caused an immense sensation. It is evident that an influential section of the community at once assumed that, if the squalor and disease of the towns were to be adequately dealt with, some new system must be found. Carlyle wrote about a "chronic gangrene," and said, "Scotland, till something better come, must have a Poor Law, if Scotland is not to be a by-word among the nations."<sup>1</sup>

Dr. Alison had said that "the higher ranks in Scotland do much less for the relief of poverty, and of sufferings resulting from it, than those of any other country in Europe." This may, perhaps, have been true ; but no one seems to have suggested that the parochial system might be worked on a more generous scale. The old Scottish method of helping the poor was condemned off-hand ; and towards the end of March, 1840, a meeting was held at Edinburgh "to form a Society of those who are convinced of the inefficiency of the present mode of relieving the poor in Scotland." This Society took the name of "The Association for Obtaining an Official Inquiry into the Pauperism of

<sup>1</sup> *Past and Present*, Bk. I. ch. i.



Scotland"; but it was clear from the first that the inquiry was intended to obtain evidence in support of the foregone conclusion that there must be a new poor-law. For this abandonment of what had been, a few months before, the pride and boast of Scotland no one political party was responsible; and a committee was formed in which judges and advocates, clergymen and country gentlemen, professors, doctors, and merchants, representing every shade of opinion on other topics, united for the purpose of pressing the Government to appoint a commission of inquiry.

Chalmers believed that this movement was "hasty and thoughtless."<sup>1</sup> He discussed the questions at issue with Dr. Alison before the British Association, which met at Glasgow in the autumn of 1840, and delivered, during the following winter, a series of lectures, which he afterwards published.<sup>2</sup> He proved, from the records of his own eighteen years of work among the poor of Glasgow, what the Church might do by patient spade work; how the sunken masses could be elevated and helped by personal intercourse and kindness; and how no amount of money, collected by the public taxgatherer and spent on the poor, would do them any permanent good so long as the rich stood aloof, and gave no sign of interest in them, and of sympathy with their sufferings. "The truth is," he said, "that the greatest palliation for the misconduct of the poor, for their recklessness, their ruinous squanderings, their low and loathsome dissipations, is the cruel abandonment of them by the upper ranks of society."<sup>3</sup>

<sup>1</sup> *Memoirs*, iv. 197.

<sup>2</sup> *The Sufficiency of a Parochial System, without a Poor Rate, for the Right Management of the Poor* (*Works of Chalmers*, vol. xxi.) This volume also contains the paper which he read to the British Association at Glasgow on *The Application of Statistics to Moral and Economic Questions*, and his essay read before the Royal Institute of France on the *Distinction, both in Principle and Effect, between a Legal Charity for the Relief of Indigence, and a Legal Charity for the Relief of Diseases*. Extracts from his *Christian and Economic Polity of a Nation, Political Economy*, etc., bearing on this subject, are given in an Appendix.

<sup>3</sup> When Chalmers was made a D.C.L. of Oxford he was described at the Commemoration (1835) not only as the champion of Church Establish-

He pointed out that the question of pauperism was precisely the question which political parties were likely to use in order to gain popularity, and foretold their "bidding for the good opinion of the multitude, which, in these days, when the constitution has been so greatly popularized, is of so much more importance than ever for the attainment of power." The questions of education and of religious instruction had been used by Governments in order to conciliate various parties among the electors; and if the treatment of pauperism was undertaken by the State in Scotland, and became a matter of political rivalry, the English system of encouraging the poor to live by the taxation of those who had the means to pay might be introduced. This, he said, would "annihilate the last remnants of that noble and virtuous habit, which was in full and fresh, because then undisturbed, operation among the Scottish peasantry in the days of our grandfathers." He was even in favour of the assessed parishes abandoning their assessments, and returning to the old practice; but this, he thought, should be done gradually, and with caution.<sup>1</sup> "With," he said, "a sufficiently thick-set parochial apparatus, whether in town or country, all our deserving poor will be carefully provided for; and the undeserving more effectually shamed out of their habits by the remonstrances of Church office-bearers, and the natural indignation of neighbours in their respective localities, than by all the terrors and penalties which the most rigorous of Poor Law Commissioners can devise."

But all this pleading was in vain. His plans for a great National Church, widely extended, with parishes where the clergyman would be welcome because appointed with the consent of the people, and strong enough to undertake

ments, but as a man "qui pauperum sortem miseratus in melius promovere pro virili semper studuit, 'humani nihil a se alienum putans.'"

<sup>1</sup> "For the work even of the most salutary reforms, we have no liking for a movement that is at all violent or desultory. We have the greatest admiration for what, in physics, Leibnitz has termed the law of continuity; a law which it were well to respect in the accomplishment of political and economic changes" (*Sufficiency of a Parochial System*, p. 108).

the whole burden of helping the poor, were shattered in the law courts; and when, in January, 1843, the Commission of inquiry into the poor law was appointed, the disruption of the Church was at hand.

Lord Melville was chairman of the Commission,<sup>1</sup> which began its work in March by hearing evidence at Edinburgh, Glasgow, and other large towns. In summer and autumn the Highlands and Islands were visited. From the remote regions of Orkney and Shetland witnesses came to Inverness. The Midland counties were next inspected; and when the inquiry was finished, evidence had been collected from every part of Scotland, and between two and three thousand witnesses had been examined.<sup>2</sup>

The Report was issued in May, 1844, and became the basis of the Poor Law Bill of the following year, in preparing which the Lord Advocate spent nearly twelve months.

The Commissioners said that, taking Scotland as a whole, the funds raised for the relief of the poor were inadequate. But, as they wished to preserve as far as possible the "peculiar merits of the Scottish system," they recommended that poor rates should not be made compulsory except where the voluntary contributions were clearly insufficient; and McNeill embodied this principle in the new law. The parish was retained as the area of administration; but in each parish a new authority, called the parochial board, was set up, and made responsible for the working of the poor law. In those parishes where no poor rates were levied the boards were to consist of those who had hitherto

<sup>1</sup> Robert, 2nd Viscount Melville. The other commissioners were Lord Belhaven, Mr. Home Drummond, M.P., Mr. James Campbell of Craigie, the Rev. Patrick Macfarlane (minister at Greenock), the Rev. James Robertson (minister at Ellon), and Mr. E. T. Twistleton, who had been an assistant Poor Law Commissioner in England.

<sup>2</sup> "The witnesses whom we have examined," the Commissioners said, "may be considered as representing every class of society. There will be found among them Members of Parliament, clergymen, country gentlemen, lawyers, medical practitioners, farmers, manufacturers, tradesmen, artisans, and labourers, differing in education, feelings, habits, and interests, and exhibiting, as will be seen, a great variety of opinions upon many parts of the subject."

looked after the poor ; but where there were poor rates a different system was established. In burghal parishes the boards were to consist of managers possessed of certain property qualifications and elected by the ratepayers, together with eight nominated members, four of whom were to be appointed by the Church and four by the magistrates. In non-burghal parishes the owners of lands and heritages valued at not less than twenty pounds a year were to form the board, together with the magistrates of any royal burgh in the parish, six members appointed by the Church, and others elected by those ratepayers who were not themselves on the board.<sup>1</sup>

The parochial boards were given power to decide whether it was necessary to levy poor rates ; and in all parishes, even where there were no poor rates, they had to appoint an "inspector of the poor," who was "to inquire into and make himself acquainted with the particular circumstances of the case of each individual poor person receiving relief from the poor funds."<sup>2</sup>

When the Lord Advocate brought in his bill he said that there were two things to be aimed at, "first to facilitate to the party entitled to relief the means of admission to the receipt of relief, and secondly, to secure due attention to his condition after the right was admitted."<sup>3</sup> The appointment of inspectors was intended to secure due attention to the condition of the pauper ; and, in order to provide redress against wrongful refusal of relief, the new law provided that the Sheriff of the county, when appealed to, could order the inspector to give relief "in the meantime," pending the final decision on the merits of the case. This was an improvement on the existing practice, which only gave the Sheriff power to order the local authority to consider

<sup>1</sup> The effect of this plan was that the parochial boards in non-burghal parishes were far too large. In one parish (in Aberdeenshire) there were more than two thousand members ! There was no check on expenditure ; and the management became very unsatisfactory.

<sup>2</sup> The Commissioners had recommended this innovation on the ground that it was "a matter of almost absolute necessity."

<sup>3</sup> *Hansard*, lxxviii. 1409.



the case, and, in the event of a refusal of relief, left the applicant with no remedy except an action in the Court of Session.

As to the vexed question of the able-bodied poor, the Commissioners had said that granting relief to those who were suffering from temporary loss of work involved problems "deeply affecting the fundamental principles of the whole system of Scottish poor law." Their opinion was that destitution arising from this cause might be relieved out of the Church collections. They also hinted that there would not be so many able-bodied poor if there was more temperance amongst the working-classes, and suggested that better education and industrial training should be provided for them. Mr. Twistleton, the English Commissioner, thought otherwise. His view was that poor rates should be levied in order to find work for the unemployed. McNeill, however, agreed with the majority of the Commission; and the Act declared that, while poor rates might be used to relieve the "occasional" as well as the "permanent" poor, no able-bodied person could claim relief as a legal right.<sup>1</sup>

The old Scottish system was, as we have seen, essentially one of outdoor relief; and the new law did not make the erection of poorhouses compulsory. The Commissioners, however, had recommended that there should be a poorhouse in every parish with a population above five thousand, "for the reception of aged and helpless persons, incurables, orphans and deserted children, and the dissipated and improvident poor"; and the Act empowered the parochial boards to build poorhouses to receive these classes, and to

<sup>1</sup> 8 & 9 Vict. c. 83 s. 68. McNeill is said to have intended, when framing the Act, to give the parochial boards a discretionary power to help the able-bodied poor in exceptional circumstances; and for twenty years this power was exercised on the authority of an opinion given in 1848 by Lord Advocate Rutherford and McNeill himself. But in 1866 the House of Lords decided that the rates could not be used for the relief of the able-bodied poor, on the ground that if there was no right to demand relief there was none to give it; *Jack v. Isdale*, *Law Reports, Appeal Cases*, February 12, 1866. This decision affirmed the judgment of the Court of Session, where the judges had been divided in opinion, McNeill, then Lord President, being in the minority.

borrow money for the purpose. All insane paupers, except in very special cases, were to be at once placed in lunatic asylums.

The establishment of a central poor law authority was the most striking feature of the Act of 1845. The Commissioners had recommended that a Board of Supervision should be appointed for a limited period, and without power to interfere with the parochial boards except by giving advice. But the Act made the Board permanent, and gave it power to control the action of the parochial boards in many ways. The rules made by the parochial boards were to be submitted to the central authority, which could investigate the management of the poor in any parish, require answers to be returned to any questions it might put, call witnesses before it, and even send representatives to take part in the discussions at any meeting of a parochial board. The central board was to consist of the Lord Provosts of Edinburgh and Glasgow, the Solicitor-General for Scotland, the Sheriffs of Perthshire, Renfrewshire, and Ross-shire, and three other persons appointed by the Crown, one of whom was to be a paid member. There was also to be a secretary, who was to receive a salary, and, along with the paid member, attend regularly at the office of the board, which was to be in Edinburgh.<sup>1</sup>

The Lord Advocate carried his bill through the House of Commons without much difficulty. There was no division on the second reading (June 12, 1845), though Rutherford asked for delay, in order to give the people of Scotland time to consider it more fully. When it went up to the other House, Lord Breadalbane pressed the Government to postpone it till next session; but the Free Church party, who were the principal opponents of the measure in Scotland, had no influence with the Ministers, and the royal assent was given on the 4th of August. On the first Board of Supervision, which was immediately appointed, the three members nominated by the Crown were Mr. Home Drummond, Sir George Macpherson Grant, and the Lord Advo-

<sup>1</sup> The three Sheriffs received £100 a year each for their services.

cate's brother, Sir John McNeill, who was the paid member, and acted as chairman from 1845 to 1868.<sup>1</sup>

"I scarcely know," Cockburn said when the Poor Law Act passed, "a more striking instance of the velocity of modern change. It is a Poor Law Revolution: one of the many examples of the precariousness of everything that really deserves to be changed. Our Poor Law, if it had not been administered with disgraceful shabbiness, was excellent."

No charge of shabbiness can, certainly, be brought against the administration of the new law. Within less than two years the expenditure on poor relief increased by nearly fifty per cent. The old Scottish methods of helping the needy were abandoned. Poor rates became almost universal. Poorhouses sprang up on every side. A host of paid officials, whose living depended on keeping up a supply of paupers, spread over the country. A Select Committee of the Commons reported after some years that "the Act has had the effect of creating a great deal of improvidence among the poor"; and it is to be feared that since then many of the evils which Chalmers dreaded have come to pass. This was sure to happen when the careful distribution of money given by the charitable ceased, and the poor, deserving and undeserving alike, found that the seemingly inexhaustible purse of the ratepayers was at their disposal.

During the great party conflicts of the following year Scottish business in Parliament was more than ever in the background; and McNeill's official career came to an end when the Commons threw out the Irish Coercion

<sup>1</sup> Sir John McNeill, younger brother of the Lord Advocate, graduated M.D. of Edinburgh, practised as a doctor in the East, was Minister at the Court of Persia, and created G.C.B. in 1839. "McNeill," Lord Palmerston wrote in 1838, "is far the ablest man we ever had in Persia, and few men understand better than he does the bearing of Persian affairs upon our interests in India"; *Early Correspondence of Lord John Russell*, II. 223. He returned to this country in 1844. Died at Cannes May 17, 1883. The Board of Supervision was abolished in 1894, when the Local Government Board for Scotland took its place (57 & 58 Vict. c. 58) and elected parish councils were substituted for the parochial boards set up by the Act of 1845.

Bill in June, 1846. "The Whigs are back again," Cockburn writes. "The Scotch *dramatis personæ* are the same as they were in 1841. Duncan McNeill has been a good Lord Advocate. It is a great deal in these all-seeing and all-speaking times for any public official to be in place without being in a scrape."

Though he was a member of the House of Commons for nearly five years after the fall of Sir Robert Peel's administration, only three speeches made by McNeill during that period are reported in *Hansard*. He seems to have taken very little interest in Parliamentary business after ceasing to be Lord Advocate; and in the spring of 1851, when there was a vacancy on the bench, he resigned his seat for Argyllshire, and was appointed a judge with the title of Lord Colonsay.

Next year came the change of Government, and the retirement of Lord President Boyle from ill-health.<sup>1</sup> McNeill was at once appointed Lord President. It was no easy task to succeed Boyle; and, though during the next fifteen years McNeill performed the duties of his high station in a way which showed that he possessed many qualities of a great judge, the First Division for some years after he became President did not command so much confidence as in the days of Boyle. The abolition of written pleadings, one of Rutherford's reforms,<sup>2</sup> had made a change in the practice of the court to which neither the bar or the bench were yet fully accustomed; and, though other improvements in procedure had been introduced at the same time, the judicial machinery did not at first run very smoothly. It was too cumbrous. There was a congestion of business; and, though matters never became so serious as in the Court of Chancery, the patience of litigants was frequently exhausted by the length of time which passed before their cases were decided.

Appeals to the House of Lords were numerous. There, however, cases from Scotland were decided by purely English judges. Many years before, in 1769, the reversal of the judg-

<sup>1</sup> Lord President Boyle retired in May, 1852. He died in January, 1853.

<sup>2</sup> In 1850; 13 & 14 Vict. c. 36 s. 14.



ment of the Court of Session in the "Douglas Cause" had certainly been very popular in Scotland. But the general sentiment of the Scottish people was that the House of Lords was not a tribunal which could be trusted; and for a long time it had been felt in the Parliament House, and also amongst English lawyers, that the court of final appeal would be strengthened by the presence of a judge who was thoroughly acquainted, from practical experience, with the law of Scotland.

In April, 1856, Lord President McNeill and Lord Justice Clerk Hope, were examined before a Select Committee which was considering the question of the appellate jurisdiction of the House of Lords. McNeill's opinion was that the state of things was very unsatisfactory, and that "the only remedy is to have a Scotch lawyer a member of the tribunal as a peer for life." The Lord Justice Clerk, on the other hand, said that the addition of a judge from Scotland would be a great mistake. Lord Brougham and apparently Lord Campbell were of that opinion, though Lord Campbell thought the proposal to add a Scottish judge so "plausible" that it could not be resisted.

Nothing was done till 1867, when, during the Derby administration, McNeill received a peerage, and took his seat amongst the judges in the House of Lords. At the age of seventy-four he was doubtless too old to do himself full justice; and, though his opinion on cases which came from Scotland must have been of value to his colleagues, it cannot with truth be said that he made any great mark as a Lord of Appeal. His best work as a judge was done in Scotland. "There was no man," his successor, Lord President Inglis, said, "more qualified by high intellectual gifts, by the integrity of his moral nature, and by the force of his character, to be President of a supreme court, and none ever filled that office who devoted himself with greater assiduity to cultivate and apply those talents with which he was blessed, so as to render them conducive to the public good."

Lord Colonsay, who had never married, died on the 31st of January, 1874, when the title became extinct.

## CHAPTER IV

### JAMES MONCREIFF

“THE health of Sir Henry Moncreiff and the independence of the Church of Scotland” was the toast proposed by John Archibald Murray at the Brougham banquet of 1825.<sup>1</sup> Sir Harry, as he was always called, “whose appearance,” we are told, “excited great interest throughout the evening,” rose, a venerable figure, from his place beside Cockburn, who was in the chair. “I am grateful,” he said, “for the honour that has been conferred upon me. I am proud to say that I have been a Whig all my days, and that I have been so in better and worse times. I am a Whig after the spirit and fashion of 1688; and, without regarding the novelties of the present time, I do not hesitate to say that the doctrines of 1688 are the principles upon which the security of this country rests.” That was all; but in these few words the old man expressed the political creed to which he had himself faithfully adhered during his long life, and in which he had taught his family to believe.

Thirty years before, in the winter of 1795, the Whigs had a meeting in Edinburgh. When Henry Erskine, then Dean of Faculty, rose to speak the room was dark.<sup>2</sup> “A lad

<sup>1</sup> The Rev. Sir Henry Moncreiff Wellwood (b. 1750, d. 1827) was the son of the Rev. Sir William Moncreiff (7th baronet), minister of the parish of Blackford, in Perthshire. His great-uncle, Henry Wellwood, conveyed to him the estate of Tulliebole in Kinross-shire, on condition that he took the name of Wellwood.

<sup>2</sup> The Hon. Henry Erskine, third son of the 10th Earl of Buchan, and brother of Lord Chancellor Erskine; Lord Advocate in 1783 and 1806,

struggled through the crowd with a dirty tallow candle in his hand, which he held up during the rest of the address before the orator's face. Many cheers honoured the unknown torchbearer." This was Sir Harry's second son, James Wellwood Moncreiff, then a boy of sixteen. The years passed on. The torchbearer of that evening went to the bar, and became the great lawyer and sturdy Whig who was the friend of Jeffrey and Cockburn. In 1827, on the death of old Sir Harry, he succeeded to the title as Sir James Wellwood Moncreiff.<sup>1</sup> Two years later he went on the bench. He left politics behind him after becoming a judge; but the Whig traditions of the family were maintained by his sons, and especially by his second son James, who succeeded Rutherford as Lord Advocate in 1851.

Mr. James Moncreiff was born at Edinburgh on the 29th of November, 1811.<sup>2</sup> He was a pupil at the High School, a bright, clever boy, who worked and played with equal spirit, and was head of the school when he left it and went to the University. It was now ten years since the fall of Napoleon and the Congress of Vienna. Though in Scotland the movement for reforms had begun, and the forces of liberalism were gathering strength, there was little to show how near at hand was the awaking of Europe from the slumber of exhaustion which had followed the wars of the French revolution. "They were," Mr. Moncreiff said long afterwards, "very sleepy days in November, 1825. Every one was asleep; literature, politics, society, were all fast asleep. The Bourbons slumbered peacefully in France, and the Holy Alliance in Europe, as if their repose was to last for ever. The literary genius of the commencement of the century had passed its zenith, and its heroes were peacefully resting on their laurels. Sometimes a note would be

<sup>1</sup> His elder brother, who was Judge Advocate at Malta, had died in 1813.

<sup>2</sup> Lord Moncreiff had married, in 1808, Miss Ann Robertson, daughter of Captain George Robertson, R.N. They had a family of five sons and three daughters. The eldest son, afterwards Sir Henry Wellwood Moncreiff, born in 1809, entered the Church of Scotland in 1835, and joined the Free Church in 1843.

sounded from Byron or the author of *Waverley* ; but the days of *Childe Harold* and *Ivanhoe* were over. Nothing prefigured the future, while little remained of the past. Wordsworth wrote nothing ; Coleridge nothing ; Campbell nothing ; the *Edinburgh Review* had nothing to criticize and had subsided into a state of chronic torpor."

This lassitude pervaded the University of Edinburgh. The atmosphere was depressing. There was little to inspire ; but "Christopher North" at least made a deep impression on young Moncreiff, who gained, amongst other prizes, the medal in the class of Moral Philosophy, and afterwards spoke of the professor with enthusiasm. "My remembrance," he said, "of the two sessions I spent with him is that of a long procession through a garden of flowers."

Then there were the debating societies, some of which every youth who was going to the bar made a point of joining. One of these, the Classical Society, was founded by Mr. Moncreiff himself and some of his friends in the summer of 1827. They conducted their debates, which were confined to classical subjects, in Latin ; and it is not surprising that the speeches were "undeniably dull, seldom fluent, and sometimes obscure." So Latin and the classics were abandoned for English and the questions of the day. Samuel Warren, William Edmonstoune Aytoun, of the *Lays of the Scottish Cavaliers*, and John Archibald Tait, the future Archbishop, were among the shining lights of this society, which Mr. Moncreiff described, in later years, as a mere forcing bed for academic politicians.

Besides the Juridical and the Scots Law, which were purely professional, as they still are, a debating club much frequented by budding lawyers at that time was the Forensic ; but, says a college magazine of that period, "no Radical ever ventured to show his face there ; scarcely a Whig is tolerated within these walls. All, or nearly all, are Tories—sleek, quiet, comfortable, but withal talented Tories. Their debates therefore want the spirit which a systematic opposition produces, and the members are generally safe at home, and in bed, by the time that they of the Speculative



are in the height of discussion." It was the Speculative, accordingly, that Mr. Moncreiff, like his father and grandfather before him, joined. The law against political debates was no longer in force.<sup>1</sup> "Many are the battles," one chronicler of these Speculative days tells us, "which we have to fight, not with the Tories, for they are a race almost extinct in the Speculative, but with the Radicals, who have here mustered their clans, and under the banner of a leader of no ordinary powers of eloquence, right obstinately do they advance to the combat, and though weekly foiled in their attempts to prove the injustice of a Church Establishment, and the evils consequent upon the existence of a standing army, weekly do they return to the conflict, and show, by the pertinacity of their opinions, that 'though defeated, they can argue still.'"

Mr. Moncreiff plunged eagerly into this mimic warfare, which often kept the members out of their beds till the small hours of the morning. Whoever the Radical champion may have been, he no doubt found his match in the young Whig, who had known the homes of Jeffrey and his circle from his boyhood, and, accustomed to hear public questions discussed by men who were in the thick of the fray, naturally became a leader amongst those of his own age. He was soon known as the best speaker in the Society—"the Don of the Spec." his fellow-students called him. Every meeting of the Speculative began with the reading of an essay; and the long list of those read by Mr. Moncreiff indicates that he was busier with his pen than most of the other members. They were doubtless, like most college essays, of little value; but the topics he chose show the direction which his thoughts were taking—"The Political Power of the People," "Mr. Pitt's Financial Measures," and so on.

Another outlet was a "University magazine," which came out in January, 1831, with Mr. Moncreiff as its anonymous editor. It was more ambitious than the short-lived publica-

<sup>1</sup> *Supra*, p. 2. It was rescinded in January, 1826. Mr. Moncreiff was admitted a member in March, 1830.

tion, with the same name, over which, long afterwards, Robert Louis Stevenson and his three companions used to sit in consultation in the lobby of the Speculative. One of the contributors was Aytoun, whose ballad of the "Wandering Jew" was published in the first number. But along with poetry and fiction there were articles on such ponderous subjects as "Mathematical Knowledge among the Romans," and "Abercrombie on the Intellectual Powers." This was evidently too stiff reading for the average student; and next year "The Nimmo, or Alma's Tawse" appeared.<sup>1</sup>

The University Magazine, the new periodical declared, was bound to fail, because it was too serious. "Who the editor was," said The Nimmo, "was for some time a sort of mystery, but murder will out,—'twas wee Jamie,—Demosthenes parvulus,—the future Dean—the Don of the Spec.—the most precocious bantam that ever taught his grandmother to suck eggs." Reading between the lines of this juvenile "chaff" we can easily see that great things were already expected of the "Don of the Spec.," who was now leaving the University, and about to enter on the real business of life in a world which had completely shaken off the lethargy of seven years before. "The sleepers," he says, "started to their feet; the drowsy hum was changed to sharp challenge and disputation; received axioms were questioned; ancient doubts were revived; and when I left college in 1832, the war of principles and words was raging more fiercely than ever, and the new dominion was laying, in energy, impetuosity, and power, the firm foundations of its sway."

Meanwhile his brother Henry had taken his degree at Oxford, where he was a gentleman commoner of New College. He was one of the first members of the Essay Club,<sup>2</sup> and a president of the Union, where he defended Lord Grey's administration in the debate (May 17, 1831) when Mr. Gladstone made the speech against the reform bill which

<sup>1</sup> Obviously named after Peter, or Sir Peter, Nimmo, the grotesque being who hung about the lecture rooms at that time. See Professor Masson's *Edinburgh Sketches and Memories*, pp. 285-290.

<sup>2</sup> Lord Morley's *Life of Gladstone*, I. iii. ii.

led the Duke of Newcastle to offer him a seat in Parliament. "Moncreiff, a long-winded Scotsman, spouted nearly an hour," the hero of that evening wrote to his brother a few days after his triumph ; but, in later times, when the ardent Tory of 1831 was at the head of the Liberal host, he wrote of Henry Moncreiff as he had known him in his Oxford days in more flattering terms : " He was more Liberal than most of us at that date, but this circumstance certainly offered no impediment to the free course of friendship, warmed by all the qualities of his heart and mind."

In the summer of 1832, Lord Moncreiff and his family were at Tulliebole ; and some old letters show that the two eldest sons were busy with their pens, composing articles for the *Presbyterian Review*, with the help of their father, who revised their manuscripts, and suggested improvements.<sup>1</sup> All Scotland was ringing with songs of triumph over the Reform Act, and the electioneering was in full swing ; but in the peaceful valley of the Devon the young men were quietly studious, Henry, who was going into the Church, criticizing the debates on Non-intrusion, while James was giving his views of the Reformation in England. In returning some proof-sheets to the editor they say that they prefer not to be mentioned as the authors, which was probably, on the part of the younger brother, a precaution against injuring his prospects at the bar by letting it be known that he occupied himself with literature as well as law.

On the 3rd of March, 1833, Mr. James Moncreiff passed to the bar. He went on the northern circuit, and made his first speech to a jury at Inverness. His client was a Highlander accused of stealing money. He was acquitted, and, without a word of thanks to his counsel, gave three jumps on the floor, threw his plaid over his shoulders, rushed from the court-house, and, Mr. Moncreiff used to say, " was out of Inverness and away to Benbecula before the clerk had recorded the verdict."

<sup>1</sup> *The Presbyterian Review* was a monthly which ran from July, 1831, till October, 1846. It supported the Established Church against the dissenters, and after the disruption was an organ of the Free Church.



In September, 1835, Mr. Moncreiff married Isabella, only daughter of Mr. Robert Bell, Advocate, Procurator for the Church, with whom the young couple kept house for some time after their marriage.<sup>1</sup> He gradually acquired a practice; and during the litigations arising out of the Church question he was often engaged on the Non-intrusion side, usually with Rutherford as his leader. He also appeared frequently as Counsel at the bar of the General Assembly. His prowess as a public speaker was already known; and on the 19th of June, 1839, at a meeting called, after the House of Lords had decided the Auchterarder case, to consider the question of asking Parliament for a measure to prevent the intrusion of unacceptable ministers, he made a speech on ecclesiastical freedom, which he said was "a cause to which every valued association, whether public or personal, devotes me, and which will be the very last which, whether in cloud or in sunshine, I shall ever be tempted to desert."

As we have already seen, the Governments would do nothing, and the civil court struck its last blow when the Stewarton case was decided in January, 1843. Mr. Moncreiff was one of the counsel in this case, and heard his father on the bench predict in solemn tones, as the result of the judgment given by the majority of the Court, "the dissolution, or entire mutilation, of that Church which has been the instrument, under Providence, of conferring such inestimable benefits on the State and on the people of these islands, which has enabled the children of this, our narrow and once dark spot of earth, by their intelligence and moral qualities, to raise their heads in honour among the nations, and which has ever been found the surest safeguard of the religious principle and moral order of society in Scotland."

When this prediction was fulfilled by the mutilation of

<sup>1</sup> Before his marriage Mr. Moncreiff lived with his father at 47, Moray Place. Then he and his wife lived with Mr. Bell at 20, St. Andrews Square, whence they all moved to 3, Moray Place, and finally to 15, Great Stuart Street, which was Mr. Moncreiff's house in Edinburgh for the rest of his life.



the Church at the disruption, Mr. Moncreiff and his brother Henry, who were both members of the Assembly which met on the 18th of May, 1843, did not immediately go out with Chalmers, but remained behind, and opposed the recognition as members of the Assembly of the seven ministers who had been deposed in the course of the notorious Strathbogie case. This proposal to treat a sentence of deposition pronounced by the supreme court of the Church as null and void, in deference to the judgment of the civil court, was carried. Mr. Bruce of Kennet, Lord Balfour of Burleigh's father, had already left the Assembly, declining to take part in a debate of which he foresaw the result. Next day Mr. Henry Moncreiff left Edinburgh.<sup>1</sup> His brother seems to have remained till the end of the sittings; and they are both named in the annual "Commission," which was appointed on the 29th of May. But within a few weeks they joined the Free Church.

Cockburn's graphic pen describes Mr. Moncreiff when he was making his way at the bar. "James, the son of Lord Moncreiff, and the grandson of Sir Harry, prolongs the hereditary talent of the family; and without being what is called learned, he is more liberally read than either of his two sires. He is as likely to reach the highest honours of his profession purely by deserving them, as any one now in it. A good lawyer, a pleasing and forcible speaker, a most agreeable writer, judicious, honourable, and friendly, there is nothing left for his friends to wish, unless perhaps it be that his outward man, which seems scarcely to belong to the strong mind, and the strong voice it is connected with, was somewhat more commanding."

This was written when Mr. Moncreiff was senior counsel for the defence at the sedition trials of 1848.

In that year of revolution abroad and disaffection at home,

<sup>1</sup> He had received the crown living of Baldernock, a parish in Stirlingshire, in 1835, and in 1837 that of East Kilbride in Lanarkshire, where he succeeded William Hanna, the son-in-law and biographer of Chalmers. After leaving the Established Church, towards the end of June, 1843, he remained at East Kilbride, as Free Church minister, till 1852, when he became minister of the (Free Church) parish of St. Cuthbert's, Edinburgh. He had succeeded to the baronetcy on the death of his father in 1851.

there were rumours of arming all over Scotland. There were Chartist processions, and a great deal of wild talking at Aberdeen. In Glasgow, where at the election of the town council a Chartist was at the head of the poll and the Lord Provost at the foot, there was serious rioting.<sup>1</sup>

At Edinburgh there were meetings, on Bruntsfield Links and on the Calton Hill, where the Chartist leaders advised their supporters to buy guns and bayonets to support their cause, said they hoped Great Britain would improve on the Irish revolution, and used language the object of which was to encourage violence and armed opposition to the law. For these offences they were arrested, and prosecuted by Lord Advocate Rutherford, on charges of sedition, and of conspiring "to effect an alteration of the laws and constitution of the realm by force and violence, or by armed resistance to lawful authority." After a trial which lasted for two days, Mr. Moncreiff, whose father was on the bench with Lord Justice Clerk Hope, and Lords Mackenzie, Medwyn, Cockburn, and Wood, had to answer a very powerful argument by Mr. James Craufurd, one of the advocate deputes, who spoke instead of the Lord Advocate, who was ill.<sup>2</sup> But he obtained an acquittal on the charge of conspiracy. A conviction for sedition could not be avoided, in view of the speeches of the accused; but the judges inflicted the mild punishment of four months imprisonment.<sup>3</sup>

When Cockburn called Mr. Moncreiff "a most agreeable writer" he was probably thinking of an article on Jeffrey's contributions to the *Edinburgh Review*, written by Mr.

<sup>1</sup> The Provost was Mr. Alexander Hastie, M.P. He was a very strong "Voluntary," and is said to have been the first dissenter who was Member for Glasgow.

<sup>2</sup> Mr. James Craufurd, afterwards Lord Ardmillan.

<sup>3</sup> Cockburn thought the Court was excellent. "Moncreiff and I were the only two Whigs. The Toryism of our brethren, however, is comparatively harmless, now that the redness of their party lines has faded." *An Examination of Trials for Sedition in Scotland* (1888), p. 228. "The prosecution," he says, "though to a great extent it failed, was of value. It implied and proclaimed that to form, or attempt to form, or to recommend, a national guard, or any military organization, is criminal."

Moncreiff for the first number of the *North British Review*, which was published in May 1844. Jeffrey himself was much pleased, and afterwards, so at least Mr. Moncreiff always thought, prompted Mr. Empson to entrust him with the task of writing the *Edinburgh Review's* article on the first two volumes of Macaulay's History. The notorious criticism in the *Quarterly*, where Mr. Croker was allowed to attack Macaulay in a fashion which was condemned by men of both parties, made every Whig who could wield a pen eager to defend the great Whig historian. "We feel undisguised pride in Mr. Macaulay's unquestionable and unalloyed success," said the *Edinburgh* in an article which gratified Macaulay so much that he wrote to Mr. Empson—"I should like Moncreiff to know how much pleasure he has given to me, and to those who care most about me."<sup>1</sup>

Seven months after this, on the evening of the 26th of January, 1850, Lord Jeffrey died. He was succeeded on the bench by the Solicitor-General, Mr. Thomas Maitland. Mr. Moncreiff became Solicitor-General, and held that office till April of next year. The last glimpses we get of Lord Moncreiff show him walking slowly up to the Parliament House, buried in his own thoughts, and sitting on the bench with a frosty look on his face, as if he did not wish to hold much intercourse with his fellows.<sup>2</sup> The great lawyer died on the 30th of March, 1851; Rutherford took the vacant judgeship; and on the 8th of April Mr. Moncreiff was appointed Lord Advocate.

He at once issued an address to the electors of the Leith district, declaring himself a free trader and a supporter of some increase in the representation of the people. "In the recent calamity," he said, "which has befallen my family, some of you may consider the name I bear as a guarantee

<sup>1</sup> The article on Macaulay is in the *Edinburgh Review* of July, 1849. Before this Mr. Moncreiff had reviewed a work on Scottish Church history by the Duke of Argyll: *Presbytery Examined, an Essay, critical and historical, on the Ecclesiastical History of Scotland since the Reformation*, 1848: *Edinburgh Review*, April, 1849.

<sup>2</sup> *Reminiscences of the Court of Session before 1856.*

of my attachment to liberal principles and regard for the people of Scotland.”

Then came canvassing and speech-making at Leith, Newhaven, and Portobello. He was questioned about extending the franchise, and answered that he thought the time had come when this might be safely done, but one great obstacle was, not the want of intelligence among the present electors, but the want of a proper moral standard among them and the candidates. “An end must be put,” he said, “to the influence, bribery, and treating now so prevalent before the franchise can be so widely extended as I should like to see it.” There was a good deal of “heckling,” especially at Leith, where some of the electors said that they wished “to be done with always having a Lord Advocate as their member.” One speaker said it was “most insulting that Leith should be the pocket borough of the Parliament House.” Another said they had already had two Lord Advocates, Mr. Murray and Mr. Rutherford, and neither of them had ever given an independent vote. “No mere nominee of the Whig Government” was shouted; and complaints were made by some of the Radicals and dissenters that both the law officers in Scotland were Free Churchmen.<sup>1</sup> It was moved that the Lord Advocate was not a fit and proper person to represent the constituency. But the real weakness of the opposition was seen when only a dozen hands were held up for this motion; and on the 14th of April Mr. Moncreiff was returned without a contest, amidst a few signs, however, of Radical dissatisfaction.

Parliament met after the Easter recess on the 30th of April (1851); and Mr. Moncreiff took his seat, not, however, on the benches which Murray, Rutherford, and McNeill had known, but in the present chamber, which had been in use for nearly a year.<sup>2</sup>

<sup>1</sup> Mr. John Cowan, the new Solicitor-General, was a Free Churchman. He was soon made a judge (June 23, 1851), and Mr. George Deas, afterwards Lord Deas, succeeded him.

<sup>2</sup> The Commons sat in their present chamber for the first time on May 30, 1850.



He entered the House of Commons when it was beginning to be realized that the formation of a coalition Government was the only way to end that disturbance of the political equilibrium which had followed the disruption of the Conservative party. With five, if not more, distinct parties in the House of Commons, the Ministers were in constant peril. Early in the session they had barely escaped defeat on a motion relating to agricultural distress which Mr. Disraeli had brought forward. This had led to conversations on the possibility of uniting the Whigs and the Conservative free traders. Sir James Graham, who thought that the Protectionists, Radicals, and Irish members would combine, wished to help the Government but did not see his way to do more than give his independent support. He seems to have doubted whether the other Peelites would follow him if he joined the Cabinet. "Lord John said it was evident that Sir James thought the Government was in great danger, and 'did not wish to embark in a boat that was going to sink.' Still, he was friendly, and repeated that it would be very easy when in opposition to unite, and then come in together." So the Queen wrote on the 17th of February; and three days later, when there was a division on Mr. Locke King's motion for equalizing the county and borough franchises, the Government were defeated by a majority of 48, the Radicals having put forth their full force, and the Protectionists, who represented the vast majority of the Conservative party, having abstained from voting.

The Ministers resigned. Lord Stanley was sent for, but could not form an administration. An attempt to arrange a coalition of Whigs and Peelites followed. It came to nothing. Then the Queen applied to Lord Aberdeen and Sir James Graham. They said they could not form an administration which would stand a day. Lord Stanley was tried again, and made an application to Mr. Gladstone, who had just returned from his memorable journey to Naples, Lord Canning, and others. But no arrangement

was found possible ; and on the 3rd of March Lord John and his colleagues returned to office.<sup>1</sup>

One great obstacle, perhaps the greatest, to that union of Whigs and Liberal Conservatives which had been almost inevitable ever since the death of Sir Robert Peel (July 2, 1850), was the ecclesiastical titles bill, to which the Ministers were committed, but which neither Lord Aberdeen, Sir James Graham, nor Mr. Gladstone would support. It was in October, 1850 that the Papal Bull, dividing the country into dioceses to be ruled over by prelates with territorial titles, appeared, and was immediately followed by the pastoral of Dr. Wiseman, now raised to the dignity of a Cardinal and appointed the first Archbishop of Westminster. On the eve of Guy Fawkes day, Lord John wrote his letter to the Bishop of Durham ; and soon after Parliament met the Government brought in the bill of penalties by which they hoped to prevent the assumption of ecclesiastical titles in respect of places in the United Kingdom. Its course was interrupted by the Ministerial crisis ; but on the 7th of March, after Lord John had resumed office, it was re-introduced in a modified form. The measure was under debate when Mr. Moncreiff took his seat in the House of Commons ; and it was on this question that he made his first speech.

In Scotland the familiar cry of " No Popery " had been raised as soon as the Papal Bull was issued ; and strongly worded resolutions against the " outrage of the Roman Pontiff " had been passed in all parts of the country, both by laymen and by the clergy of the various denominations. Looking back, the agitation of 1851 is seen to have been unnecessary, indeed almost ludicrous ; and even at that

<sup>1</sup> During the Ministerial crisis Prince Albert had an interview with the Duke of Wellington, who " expressed his regret, and his dread of a Protectionist Government with a dissolution, which might lead to civil commotion. He could not forgive, he said, the high Tory Party for their having stayed away the other night on Mr. Luke King's motion, and thus abandoned their own principles ; he had no feeling for Lord John Russell's Cabinet, measures, or principles, but he felt that the Crown and the country were only safe in these days by having the Liberals in office, else they would be driven to join the Radical agitation against the institutions of the country." *Letters of Queen Victoria*, February 23, 1851.

time, though the temporal power had been so recently restored, and though the tractarian movement was causing alarm, so great a tempest would probably not have arisen but for Cardinal Wiseman's pastoral. "Given out of the Flaminian Gate at Rome"; "Catholic England restored to its orbit in the ecclesiastical firmament"; "Rome the source of jurisdiction, light, and vigour"; it was this bombastic and overbearing tone that irritated the country. Mr. Moncreiff, therefore, expressed a very general feeling when he said (May 15) that the papal rescript was "couched in the language of the conqueror of a once revolted, but now vanquished province," and amounted to a claim to domination and supremacy over the Protestants of this country.<sup>1</sup>

His speech, however, did not escape criticism on one point. He had said that the Roman Catholics, as dissenters in this country, should act with humility. The Free Church, said the *Scotsman*, is anything but humble. It calls itself the National Church, and assumes every ecclesiastical title the Establishment possesses. "That a leader and representative of a dissenting church pursuing such a policy should get up in the House of Commons to preach humility as the first duty of dissenters, is an instance of how little, in the class of questions opened up by this wretched controversy, we can trust to one another, and how difficult it is for us to see ourselves as others see us."<sup>2</sup>

No first speech could have been made in more favourable circumstances. He had been known for years to the Prime Minister and others on the front bench; and almost every member present was aware of what family the new Lord Advocate came. His style of speaking had none of the dull fluency of most lawyers. With a House of Commons manner from the first, he caught the ear of that difficult audience at once, and never lost it during all the long years he remained in Parliament. He continued to speak, from time to time on behalf of the Government in the debates which closed on the 4th of July, when, after five months

<sup>1</sup> *Hansard*, cxv. 1007.

<sup>2</sup> *The Scotsman*, May 21, 1851.

of wasted time, this ill-fated bill was passed by a majority of 263 to 46.

In ordinary circumstances Ministers who had carried the most important of their measures by so large a majority would have felt safe in the House of Commons for some time to come. But the ecclesiastical titles bill had estranged the Catholic members from Ireland, whose support the Government could not afford to lose; and the dismissal of Lord Palmerston (December 19, 1851), the Minister who above all others possessed the confidence of the country, changed a useful colleague into a watchful critic. On the 20th of February, 1852, Lord Palmerston had his "tit-for-tat with John Russell," when he carried his amendment to the militia bill. Next day the Russell Ministry resigned; and Lord Derby came in with what the Queen called "a very sorry Cabinet."<sup>1</sup>

The formal change of Government took place on the 27th of February. Next day a new Lord Advocate was appointed. This was Mr. Adam Anderson, who was in office for barely three months, and of whom little need be said. He had been at the bar since 1818, and, after thirty-four years of steady work, was known as a plodding, cautious, trustworthy counsel. He was one of the best lawyers of his day, and his tall figure—he stood well over six feet—was year after year a familiar object in the courts, where he argued acutely before the judges in a voice which was curiously high-pitched and harsh. In politics he had always been a good party man of the old school. When Sir George Clerk offended the Tory leaders in Midlothian by supporting Mr. Canning, he and his brother pledged themselves to vote

<sup>1</sup> Lord Stanley was now Earl of Derby, his father having died in June, 1851. Besides himself, the only members of his Cabinet who had ever held office were Lord Lonsdale, President of the Council, and Mr. Herries (then member for Stamford) who was at the Board of Control. "I shall take the trial as patiently as I can," the Queen wrote to King Leopold, February 24, 1852.



for any cadet of the Dundas family who might stand against Sir George.<sup>1</sup> After the fall of the Duke of Wellington he took an active part in the unavailing struggle against the Whig administration of Lord Grey, went to public meetings, and at the last was one of the old guard who stood firmly by Professor Wilson, when the cry of "no surrender" was raised at the "great constitutional meeting" of November, 1831. As a reward for his services he was appointed Sheriff of Perthshire during Sir Robert Peel's short administration of 1835, and in 1842 succeeded McNeill as Solicitor-General. That office he held till the Conservatives went out in June, 1846; and five years later, when the Liberal Government gave McNeill his judgeship, Anderson succeeded him as Dean of Faculty.

It is unlikely that Mr. Anderson had any desire to shine as a legislator when he took the Lord Advocateship in February, 1852; and in May, when he had been in office for less than three months, he went on the bench. Here he was well fitted to distinguish himself; but he was not long a judge. In the autumn of 1853 he was suddenly taken ill at Folkestone on landing from a trip on the continent, and died in London on the 28th of September. "Anderson's personal amiableness," says Cockburn, "and his official sense made him a great favourite, and everybody has been saddened by the unexpected close of his short career."

Mr. John Inglis, who had been appointed Solicitor-General on the change of Government in February, 1852, became Lord Advocate when Mr. Anderson went on the bench, and was in office till the fall of the Derby administration; but he was not in Parliament, and it will be convenient to postpone an account of his career till we come to a second term of office, during which, though it lasted for only a few months, he carried one very important measure, the Scottish Universities Act, through the House of Commons.

<sup>1</sup> This brother was Mr. David Anderson of Moredun, a member of the private banking house of Sir William Forbes & Co., founded by Patrick Coutts early in the eighteenth century, and now merged (since 1838) in the Union Bank of Scotland.

When Lord Derby formed his administration in February, 1852, the Conservative party was so weak in men fitted for office that Mr. Disraeli was the only Minister of really high talent in the House of Commons ; and even he was still regarded as little more than a first-rate political gladiator. Cynical persons treated his appointment as Chancellor of the Exchequer as a joke. To the city it seemed a hazardous venture. "Lord Derby," said one paper, "has had the incredible rashness to make Mr. Disraeli Chancellor of the Exchequer. Surely it might have been possible to find some less delicate system of machinery than the finances of the country as a subject for such an experiment." The Queen too felt no confidence in the Government. "I believe," she said, "that it is quite necessary they should have a trial, and then be done with it." Mr. Disraeli, however, led the Commons tactfully ; and the Ministers, though in a minority, held their own without a disaster till the beginning of July, when Parliament was dissolved.

The election for the Leith district was the first in Scotland. There had not been a contest since the battle between Lord Advocate Murray and Sir David Milne in 1835. But Mr. Moncreiff had now to fight for his seat. His opponent was Mr. Wingate Henderson, who stood as a Conservative, but was ready to vote for free trade—provided there was reciprocity. "Free Trade without reciprocity is," he said, "a pure delusion." A third candidate canvassed the constituency vigorously, and amused the electors by some fervid stump oratory in favour of Chartism, by that time dead and buried, socialism, and something very like what is to-day called syndicalism. But the working-men of Leith laughed at him ; and on the nomination day he retired when he found that no one would take him seriously. The Conservatives made a bid for the Radical vote by posting up placards advising the electors to "Keep clear of the Bar," and telling them that Mr. Moncreiff "seems to consider himself as a knight of old, bound by duty to keep the castle of Leith for the Lord Advocates of Scotland against all comers." The Liberal procession to the hustings was headed by a flag

bearing the words "Free Trade," and a pole on which a fivepenny loaf was fixed. The old cry of free trade and cheap bread, as potent then as it had been during the lean years that were past, carried the day ; and on the 9th of July, when only 1,050 electors went to the poll, Mr. Moncreiff had a majority of 236.

But an election of far greater interest was in progress at Edinburgh. There were five candidates for the two seats. In May Macaulay had been asked to stand. The terms on which he accepted this invitation have been recorded by his nephew.<sup>1</sup> They could not have been more worthy of himself and of the city which was now to make amends for what had been done five years before. Mr. Charles Cowan, who had been at the head of the poll in 1847, was to stand again. A young Conservative, Mr. Bruce, put on his armour on behalf of the Government.<sup>2</sup> Mr. Campbell of Monzie descended from the Highlands as a free lance. Mr. Duncan McLaren represented an irreconcilable faction whose antipathy to Macaulay was as bitter as ever.

Mr. McLaren, the son of a farmer in Dumbartonshire, after some business training at Dunbar and Haddington, had gone when quite a young man to Edinburgh, where his industry and great capacity for affairs had made him successful in his private undertakings, and had quickly raised him to a prominent position as a citizen. In 1833, after the corporations had been reformed, he was elected to the town council, being then only in his thirty-fourth year. The mismanagement of the old self-elected councillors had left Edinburgh over head and ears in debt ; but Mr. Adam Black, who was treasurer of the city for some time, arranged a scheme to satisfy the claims of the creditors. He was succeeded as treasurer by Mr. McLaren, who took up the matter at the point where Mr. Black left it, settled some points which were in dispute, and carried into effect the plan which Mr. Black had devised. For his services Mr. McLaren

<sup>1</sup> *Life and Letters of Lord Macaulay*, chapter xiii.

<sup>2</sup> The Hon. Thomas Charles Bruce, son of the seventh Earl of Elgin, afterwards M.P. for Portsmouth.

received a presentation of plate in 1839, which was made by Mr. Rutherford, then Solicitor-General, who had been counsel for the city during the negotiations.<sup>1</sup>

Mr. Black and Mr. McLaren had worked cordially together during these transactions ; but it was thought by Mr. Black's friends that while he had done most of the work, Mr. McLaren had taken all the credit. This petty question was the prelude to a series of differences between two parties in the city, where it was seen that Mr. McLaren intended to make the credit he had gained in municipal affairs the stepping-stone to something higher. He was a dissenter of the most uncompromising type, whose great ambition was to destroy the Established Church, and make radicalism supreme in Edinburgh. As time went on he became the personal friend of Cobden and Bright, with whom he was in frequent correspondence.<sup>2</sup> Mr. Bright did all he could to foment trouble for Macaulay in Edinburgh ; and, at his instigation, Mr. McLaren, in 1844, threatened to run a League candidate against Macaulay. When the year of Macaulay's defeat came there was already a complete estrangement between the whole body of the Whigs and Mr. McLaren, than whom no one did more to injure Macaulay. In his ceaseless warfare against the Church, and against the Whigs, he had a formidable weapon—the local grievance of the “annuity tax,” which was the source of much bad blood, and a thorn in Mr. Moncreiff's side for many years. This was a tax, dating from the reign of Charles the First, of a percentage on the rental of shops and dwellinghouses, payable by the occupiers, to provide stipends for the city clergymen. As dissent grew in Scotland the opposition to this method of supporting the Church increased ; and one great cause of discontent was that the members of the College of Justice, that is to say all the lawyers in Edinburgh, were exempt from payment.

<sup>1</sup> Mr. Rutherford received the freedom of Edinburgh on this occasion.

<sup>2</sup> “Duncan McLaren was, next to Cobden, the man whom Bright most often consulted on political questions.”—Mr. G. O. Trevelyan's *Life of John Bright*, p. 173.



After the disruption of 1843, when several of the city churches were left almost empty, the agitation against the tax became more violent than ever, and many householders refused to pay it. The goods of the resisters were seized, and soldiers were marched down from the castle to protect the auctioneers who sold them. It was, indeed, probable that if this obnoxious tax was abolished rents would rise ; but "conscience" was pleaded as a reason for refusing to pay by those dissenters who were opposed, on principle, to the existence of any Established Church. Thus the Edinburgh Annuity Tax not only kept alive the standing grievance of nonconformity at all times—the enforced payment of money in aid of a State Church—but placed the judges, the bar, and the whole legal profession, so prominent in the social life of the city, in a position of privilege, which was deeply resented by other classes of the community.<sup>1</sup> All this was of immense use to Mr. MacLaren in the work of turning dissent into an organized political force, and creating a strong Radical party which was to undermine and destroy the Whigs, and most of all the Parliament House Whigs.

When Parliament was dissolved in July, 1852, Mr. McLaren was in his fifty-third year, Lord Provost of Edinburgh, and a man of some political standing beyond the closes of the High Street, as brother-in-law of the great tribune of the plebs, to whose sister, Miss Priscilla Bright, he had been married for three years. He had neither sympathy with the feelings which had inspired the invitation to Macaulay, nor any hesitation about trying to unseat Mr. Cowan, whom he had himself introduced to public life at the last general election. He showed, indeed, a singular animosity against

<sup>1</sup> "The exemption of the College of Justice is one of the greatest grievances, when you trace its operation ; for it comes to this :—in Edinburgh the aristocracy are the lawyers ; they occupy the highest rented houses, and they are exempted ; they are the parties who chiefly remain in the Established Church. The poor, and what we call shopocracy, have almost all left the Church."—Evidence of Mr. Duncan McLaren before the Select Committee on the Edinburgh Annuity Tax, 1851, *Parl. Papers*, 1851 (617), vii. i. p. 286. Mr. McLaren told the Committee that he "could not find terms sufficiently strong" to condemn the exemption of the lawyers from that tax.

Mr. Cowan, and also against Mr. Adam Black, who was frequently and rudely interrupted by some of Mr. McLaren's party when he proposed Macaulay. When he found that Macaulay and Mr. Cowan had been elected he spoke some bitter words, declaring that the result was due to an intrigue by which Mr. Cowan had secured a portion of the Conservative vote. "Ye're an awfu' crabbed body, Duncan," was one of the homely remarks from the crowd during this angry speech. Frankenstein had been mastered by his own creature, said the powerful journal which had never ceased to lament the fiasco of 1847. "Edinburgh is herself again. She has magnanimously acknowledged and amply repaired her error."<sup>1</sup> All over the kingdom the news of Macaulay's triumph was received with intense pleasure. "The enthusiasm in his favour," says Sir George Trevelyan, "was not confined to his own party. Professor Wilson, the most distinguished survivor from the old school of Toryism, as Toryism was understood by Lord Melville and Sir Walter Scott, performed the last public act of his bustling and jovial existence by going to the poll for Macaulay."<sup>2</sup>

Only five of the thirty county seats in Scotland were contested. In Banffshire, Orkney and Shetland, and Ross-shire, Liberals defeated Conservatives. In Caithness two Liberals, Mr. George Traill and Sir John Sinclair, went to the poll; and Mr. Traill, the sitting member, won the seat, which he held till 1868. In Ayrshire, on the 22nd of July, Mr. Edward Cardwell, who had just lost his election at Liverpool, was defeated by Colonel Hunter Blair.<sup>3</sup> The unopposed county returns sent to the House of Commons twelve Conservatives, seven Liberals, and six Peelites, or Liberal-Conservatives; and the representation of Scotland

<sup>1</sup> *Scotsman*, July 14, 1852.

<sup>2</sup> In November, when Macaulay, who had taken no part in the election, went down to Edinburgh and addressed a public meeting, the *Times* sounded a note of sorrow that he should have left his study to sit in the House of Commons. "Who would not," it said, "regret to see the noble narrative of the deeds of Marlborough and the councils of Walpole interrupted for such a purpose."

<sup>3</sup> In January, 1853, Mr. Cardwell was returned for Oxford, which he represented till he was raised to the peerage in 1874.

was strengthened by the unopposed election of Mr. Stirling of Keir, afterwards Sir William Stirling Maxwell, who now entered Parliament for the first time, as Conservative member for Perthshire. In the towns the Conservatives were, as usual, routed, twenty-two Whigs and Radicals and one Liberal-Conservative being elected.<sup>1</sup>

The new Parliament met on the 11th of November.<sup>2</sup> In the House of Lords the Prime Minister announced what Lord Malmesbury calls "his compulsory adherence to free trade." In the House of Commons the Chancellor of the Exchequer spoke to the same effect.<sup>3</sup> But this did not save the Government, who were defeated on the budget by a majority of nineteen on the 17th of December. Next day Lord Derby told the Prince Consort that it was understood that at last the Whigs and Peelites had come to an agreement, and were ready to form an administration on conservative principles, to the exclusion of the Radicals, under the lead of Lord Aberdeen.

This separation of Lord Aberdeen from the Conservative party seems to have surprised Lord Derby, who told the Queen that before the dissolution he had received messages from Lord Aberdeen to say that he would never join the Whigs. There had evidently been a misunderstanding. "Lord Aberdeen," Prince Albert says "disclaimed all such messages, though he acknowledged to have been very friendly to Lord Derby. At the general election, however, it appeared to him that there was such a

<sup>1</sup> This was Mr. James Baird, who was elected for the Falkirk district, after a sharp fight with Mr. Anderson, Q.C. Mr. Baird, who assured the electors that the Government would not return to protection, won by a majority of fifty. This was a disappointment to the Liberals, and, say the newspapers, "the honourable member was received by his constituents with groans and insulting epithets."

<sup>2</sup> Lord Malmesbury (*Memoirs of an Ex-Minister*) put the composition of the House of Commons thus :—Derbyites 292, Peelites 30, Whigs 120, Radicals 160; Irish Brigade 50. He underestimated the strength of the Peelites, who numbered more than 40.

<sup>3</sup> "Lord Derby owned (upon my blunt question) that he did not think that Mr. Disraeli had ever had a strong feeling, one way or the other, about Protection or Free Trade, and that he would make a very good Free Trade Minister."—*Memorandum by Prince Albert*, November 28, 1852.

total want of principle in him and his party, pledging themselves for protection in one place and free trade in another, and appearing consistent only in one point, viz., their hatred to Sir Robert Peel's memory, and his friends, that he became determined to have nothing more to do with them." <sup>1</sup>

Sir James Graham's opinions had always been liberal. Mr. Gladstone was turning in the same direction, and along with the Duke of Newcastle and Mr. Sidney Herbert, agreed to throw in his lot with Lord John Russell and the Whigs. Lord Palmerston, without whom the new arrangement could not have been carried out, was secured. Sir William Molesworth was taken in to represent the Radicals; and the long expected coalition Cabinet, "composed almost entirely of experienced men," <sup>2</sup> was completed before the end of the year. "Think of a Scotsman and a Presbyterian being Prime Minister in these days of Puseyism!" wrote Lord Campbell, when he heard that Lord Aberdeen was at the head of affairs. "The Radicals," he said, "have been for the last twenty years a very unreasonable and arrogant race, and we may now see a Liberal Government with sufficient Conservative support to be able to disregard them." <sup>3</sup>

Of twenty-six re-elections on the change of Ministry only three were in Scotland. Mr. Francis Charteris, whose name of Lord Elcho was afterwards for so many years an honoured household word all over the country, was not disturbed in Haddingtonshire on becoming a Lord of the Treasury. Lord Drumlanrig, on taking office as Comptroller of the Household, received a private hint from a friend one afternoon at the Carlton that he might be opposed in Dumfriesshire; but when he reached Scotland he found that, the Duke of Buccleuch having intimated his wish that the coalition

<sup>1</sup> *Queen's Letters*, December 28, 1852.

<sup>2</sup> Mr. Gladstone, *English Historical Review*, April, 1887.

<sup>3</sup> *Diary*, December 28, 1852. Six months later he notes:—"The Thanes fly from Derby, and now, for the first time since I have been a Parliament man, a Liberal Government has a steady majority in the House of Lords."



should have a fair trial, there was to be no contest. Mr. Moncreiff, appointed Lord Advocate on the 30th of December, was re-elected for the Leith district in the first week of the new year.

For the next sixteen years Mr. Moncreiff remained in Parliament. We have seen how Rutherford and McNeill were the authors of statutes dealing with land tenure, the rules of evidence, the treatment of the poor, and many other topics. As always happens, some of these statutes required improvement in course of time ; and numerous amending acts were carried through Parliament by Mr. Moncreiff. He also introduced additional reforms into branches of the law with which his predecessors had already dealt. The law of evidence, for example, which Rutherford, adopting the principle of Bentham—that the object of hearing witnesses is, after all, to discover the real facts—had altered soon after he became Lord Advocate, was further improved by changes which permitted the examination of witnesses whose testimony had hitherto been excluded by rules which will have been devised for the express purpose of concealing the truth. In another branch of law one of Mr. Moncreiff's statutes, providing a better system of registering births, deaths, and marriages, was a measure which Rutherford had tried in vain to carry ; and he succeeded in bringing into the law of Scotland the principle of representation in movable succession which had been delayed for some years by the influence of McNeill.<sup>1</sup>

His contributions to commercial legislation were important ; and it was perhaps in this department of jurisprudence which was of vital interest in the middle of last century, during a period of flourishing trade and unusual prosperity, that he principally distinguished himself as a law reformer. More than one hundred bills are said to have passed into law under his guidance.<sup>2</sup>

The question of University tests in Scotland was settled

<sup>1</sup> *Supra*, p. 130. *Intestate Succession (Scotland) Act*, 1855, 18 and 19 Vict. c. 23.

<sup>2</sup> *Dictionary of National Biography*, Supp. I, vol. 3, p. 185.

by Lord Advocate Moncreiff in the first year of the coalition. The agitation on this subject had continued ever since the loss of Rutherford's bill ; and when, in 1850, Professor Wilson resigned the Chair of Moral Philosophy at Edinburgh, and the town council, who were the patrons, appointed a Free Churchman, Mr. Patrick Campbell Macdougall, as his successor, the matter became more pressing than ever. Mr. Macdougall did not sign the test ; but he delivered his lectures on the authority of the town council, though not recognized by the *Senatus Academicus* as having been validly inducted. The statutes which had been invoked against Sir David Brewster were invoked against him. But the public opinion of Scotland was almost unanimous against the test, and in the session of 1851 a bill to abolish it, of which Mr. Charles Cowan was in charge, was rejected by a majority of only one.<sup>1</sup>

Next year, during the Derby administration, Mr. Moncreiff made another attempt ; but he was defeated.<sup>2</sup> When Parliament met in November, 1852, Lord Derby told the Duke of Argyll that the test was to be maintained.<sup>3</sup> But within a month came the fall of the Conservative Ministers, and Mr. Moncreiff's return to office as Lord Advocate in the coalition. He then prepared a bill, which he explained to the House of Commons on the 28th of June, 1853. The existing test was to be abolished ; but every professor was to make a declaration that he would not teach any doctrine opposed to the divine authority of the Bible or to the Westminster Confession of Faith, and also that he would not exercise his office to the prejudice of the Church.

The second reading of the bill, which thus opened the University chairs to nonconformists, was moved in July, by Lord Elcho.<sup>4</sup> It was carried by a large

<sup>1</sup> *Hansard*, cxvii. 1210-1230.

<sup>2</sup> *Hansard*, cxx. 1225-126 ; *Speech of James Moncreiff, Esq., in the House of Commons*, April 27, 1852.

<sup>3</sup> *Hansard*, cxxiii. 777.

<sup>4</sup> Mr. Charteris had just become Lord Elcho on the death of his grandfather, the seventh Earl of Wemyss, June 28, 1853.

majority<sup>1</sup>; but, after it was safely through the House of Commons, the Commission of the Church of Scotland passed a resolution condemning it, "as an unmerited and unwarrantable aggression on the rights and privileges guaranteed to the Church by Acts of the Scottish Parliament, and by the Treaty of Union; as a flagrant infringement of a solemn international compact; and as involving a change in the constitution of the Universities most prejudicial to the interests of sound education." This resolution was sent to Lord Aberdeen; and it was agreed that if the House of Lords passed the bill the Queen should be asked to refuse the royal assent.<sup>2</sup> In the House of Lords, despite these protests, the bill was read a third time, and passed without a division.<sup>3</sup> The indignation of some Churchmen was so unbounded that in the presbytery of Edinburgh a proposal to agitate for the repeal of the new law and a renewal of the test, and, if this failed, to set up Church colleges apart from the Universities, was rejected by only one vote.<sup>4</sup> So hard dies privilege.

The abolition of the University test had been inevitable ever since the disruption of 1843, though the reluctance of a party in the Church to surrender any privilege had delayed it for ten years. But a far more difficult question was now before the country.

In the session of 1853 the Forbes Mackenzie Act for regulating public-houses in Scotland was passed.<sup>5</sup> "Until,"

<sup>1</sup> 106 to 17, *Hansard*, cxxix. 166.

<sup>2</sup> This seems to be the only meaning of the words:—"a loyal and dutiful address, stating the confidence with which they look to Her Majesty for the full preservation of the rights and privileges so solemnly secured to the Church."—*Acts of Assembly* (Commissions), August 10, 1853.

<sup>3</sup> *Hansard*, cxxix. 1752; 16 and 17 Vict., c. 89. This statute provided that if a professor failed to make the required declaration, the Lord Advocate might apply to the Court of Session for an order to prevent him lecturing till he had complied with the law (Sect. 4). If a professor violated his declaration, the Lord Advocate might complain to the Crown, and a Commission might be appointed to investigate the case (Sect. 5).

<sup>4</sup> On February 8, 1854.

<sup>5</sup> 16 and 17 Vict., c. 67. Mr. Forbes Mackenzie of Portmore was one of two Conservative candidates who carried Liverpool at the general election of 1852. A petition was presented against their return on the ground of

Mr. Moncreiff said in a speech on this measure, "you get hold of the moral nature of the people, until you can spread education, until you can produce a better and healthier tone in the moral state of society, I believe you can do very little by bills of this sort." If, he said, the squalid habits of the lower orders were to be changed, something more than a restriction of the opportunities for drinking was required; and for many years, in fact throughout his whole career in Parliament, Lord Advocate Moncreiff made one attempt after another to raise the tone and improve the condition of the Scottish people by spreading the knowledge and enlightenment which follows education.

It is needless to say that at every attempt he was confronted by the "religious difficulty." Ever since the Reformation the Church had been the guardian of education in Scotland. The reformers proposed to the privy council of Scotland that every parish should have a school, with a teacher paid out of the property of the fallen Church of Rome. But the privy council, that dangerous instrument of oppression, the abolition of which was one of the best fruits of the Union, had no sympathy with the noble schemes of Knox. The patrimony of the ancient Church passed into the hands of the Crown and the nobility. But though the Protestant Church got little or nothing, it did what it could for the education of the people. Many schools, paid for by the clergy and their parishioners, were set up, and money which in England was spent in subsidies to pauperism was in Scotland spent on education.<sup>1</sup>

Nearly fifty years after the Reformation, when episcopacy

bribery and treating by agents; and on the 30th of June, 1853, the day on which the Commons went into committee on the public-house bill, the election was declared void, and Mr. Mackenzie was unseated.

<sup>1</sup> In every parish where there was a school the minister and his "kirk session" managed it under the superintendence of the presbytery. Dr. McCrie, in his *Life of Melville*, mentions that the minister and kirk session of a parish in Fifeshire issued an order that all parents must send their children to school. Rich parents who refused were put under "discipline" by the Church, and charity was withheld from poor parents who disobeyed this order. The children of the destitute poor received free education, and were allowed three hours a day in which to beg for food.



had for a time displaced the presbyterian system, the privy council of Scotland directed the bishops to establish parish schools; but little was done till, during the civil war, the Covenanting Parliament of 1646 supplemented the work of the Church by enacting that the landowners in every parish must provide a school and a teacher.<sup>1</sup> At the Restoration all this was changed. The first Parliament of Charles the Second repealed the statute of 1646; and education was almost totally neglected till some years after the Revolution, when the Scottish Parliament passed the memorable statute which directed the landowners in all parishes to build a school and provide a salary for the schoolmaster.<sup>2</sup> The system which was thus established was continued after the Union. The schoolmasters were appointed by the clergy and the landowners, and had to sign a test, declaring their adherence to the Church of Scotland and the Westminster Confession of Faith. Religious instruction was not required by law; but in practice it was invariably given.

What education did for Scotland is a commonplace of history; but as time went on and the population of the country increased, it was found that the number of schools was insufficient, and that the salaries were so inadequate that competent teachers could not be obtained. At the beginning of the nineteenth century the subject was investigated by a Royal Commission, and by a committee of the General Assembly; and Sir Harry Moncreiff, his friend Dr. Andrew Thomson,<sup>3</sup> and other leaders in the Church, began to fear that Scotland was no longer, as of old, the model of an educated nation. Chalmers, too, had his doubts, and devoted himself, with characteristic energy, to increasing the number of schools in his own parish.<sup>4</sup>

<sup>1</sup> *Act for Founding Schools in every parish*, 1646.

<sup>2</sup> *Act for Settling Schools*, October 9, 1696.

<sup>3</sup> Minister of St. George's Church, Edinburgh. He had great influence with the Whigs till his death in 1831.

<sup>4</sup> He did not believe in free education. "What is gotten for no value, is rated at no value. What may be obtained without cost in money, is often accounted unworthy of any cost in pains. What parents do not pay for the acquirement of, children will not be so urged to toil for the acquirement of. To be away from school, or to be idle at school, when not a

After the Reform Act cautious men could not help feeling anxious ; for though the franchise was still in the hands of a class which might be expected to use it wisely, it was even then easy to see that political parties would soon be tempted, for the sake of popularity and office, to go a great deal farther than Lord Grey and the Whigs of 1832, and put the supreme power in the hands of men whose want of knowledge would make them an easy prey to ignorant and unscrupulous agitators.

A pamphlet of this period, which caused nearly as much alarm on the subject of Scottish education as had been caused about the poor laws by Dr. Alison's pamphlet, pressed this point very strongly, "Each new extension of the political charter," it said, "lays a stronger and stronger necessity upon the governors, for their own security, to educate the people ; lest the blind giant, when brought out of his prison-house, press too hard on the pillars of authority. . . . Unless the legislature go forward in good earnest to meet the wants of the ignorant and irreligious population of our towns, as our cities increase, ignorance and irreligion will increase also ; discontent, and turbulence, and pauperism, will increase ; and if the nation will not pay for the schoolmaster to prevent crime, it must pay tenfold for the repression of social disorder, and for coercing an unhappy, dissolute, and reckless population." <sup>1</sup> This warning was given in 1834 ; but some years passed before the Scottish public was roused from its apathy on the question of education.

The parish schools of Scotland were Church schools, managed by the clergy under the supervision of ecclesiastical

matter of pecuniary loss, will far more readily be a matter of connivance." —*Considerations on the System of Parochial Schools in Scotland : Works of Chalmers*, vol. xii., p. 196. Education, he said, should be part of the family expenditure, so as to make the interest of the parents a guarantee for the diligence of their children.

<sup>1</sup> *Scotland a Half-Educated Nation, both in the Quantity and Quality of her Educative Institutions*, 1834. The author was the Rev. George Lewis, editor of the *Scottish Guardian*. At this time Scotland, with a revenue of £5,000,000, had no more schools than at the time of the Union, when the revenue was only about £200,000.

courts, and protected by a stringent test against the presence of nonconformist teachers. At the disruption, therefore, many teachers who joined the Free Church either retired or were dismissed.<sup>1</sup> The Free Church forthwith raised £50,000, and built several hundred schools, in order that there might be, if possible, a school attached to each Free Church congregation. This step was taken on the plea that many Free Churchmen had been thrown out of employment by the test. But it was difficult to defend any system of denominational education in Scotland. Churchmen and nonconformists, except the Roman Catholics and Episcopalians—a small minority of the population—used the same rites in public worship, the same creed, the same catechism, the same confession of faith. Exactly the same religious instruction was given in their schools. There was no question, as in England, of a different “atmosphere”; and people began to wonder whether it was necessary to carry their quarrels about principles of ecclesiastical government, and the relations of Church and State, into the buildings where their children were learning to read and write.

Though a majority of the Free Church supported the erection of denominational schools as a means of continuing the traditional connexion between Church and school, others, notably Dr. Thomas Guthrie the philanthropist, were in favour of trying to discover some workable system of national education. Guthrie went into the question with Lord Advocate Rutherford, and wrote about it to Mr. Fox Maule, soon after the Whigs came in on the fall of Sir Robert Peel in 1846; and next year, when the system of privy council grants in aid of education was instituted, a deputation from the Free Church went to London, and had a conference with Lord Lansdowne and the education committee of the privy council, at which they urged that it was both desirable and practicable in Scotland to have a national system of education superseding all such grants. The Free Church, in the

<sup>1</sup> *Return of Parochial Schoolmasters who have retired or been removed from their situations since the month of May, 1843: Parl. Papers, 1844 (610), xlii. 671.*



meantime, accepted the privy council grants, which were given on condition of submitting to Government inspection, and the raising of a sum equal to the grant in each parish, and appears to have profited from them even more than did the Established Church.<sup>1</sup>

When Mr. Moncreiff became Lord Advocate the agitation for a national system was taking shape. A "National Education Association of Scotland," at a public meeting held in Edinburgh on the 25th of January, 1854, adopted the principle that popularly elected boards should appoint the teachers and manage the schools, and that a central authority, responsible to Parliament, should superintend the work of these local boards. The Association thought it unnecessary for either Parliament or the central authority to dictate the subjects to be taught or the books to be used, and that the question of religious instruction, which it was taken for granted would be given, should be left in the hands of "the ministers and religious communities in the various localities."<sup>2</sup>

Such men as Macaulay, the Marquess of Breadalbane, Lord Dalrymple, Sir William Gibson Craig, Sir David Brewster, Mr. Joseph Hume, Lord Panmure, Sir Henry Moncreiff, Dr. Guthrie, and other strenuous supporters of educational reform joined this movement. But every one knew that many of the dissenters would resist to the last all proposals to use public money for religious instruction, and that the Established Church identified its existence with supremacy over the parish schools and with the maintenance of the test for schoolmasters. That the Church would oppose any system which took away its control had been made perfectly clear long before;<sup>3</sup>

<sup>1</sup> *Return of Privy Council Grants to the various religious denominations in Scotland* : Parl. Papers, 1847-1848 (197), 4, 49 ; *Return of Schools in Scotland receiving Privy Council Aid* : Parl. Papers, 1852 (266), liii. 471.

<sup>2</sup> *Report of Public Meeting in Edinburgh, on Wednesday, January 25, 1854,*

<sup>3</sup> "The policy of the State in Scotland . . . has at all times regarded the Parish School as part and parcel of the National Church, placing it under the control and superintendence of the presbyteries of that Church, and regarding Parochial Schoolmasters as Ecclesiastical persons."—*Pro-*



and two education bills, though supported by a majority of the Scottish members, had lately been rejected in the House of Commons on the express ground that they interfered with the management of schools by the Church.

Speaking on one of these bills Mr. Moncreiff had said that, though the Government would not pledge itself to every detail, he asked the House to lay aside all minor differences, and give it a second reading.<sup>1</sup> The moment he sat down Sir Robert Inglis, Mr. Gladstone's colleague at Oxford, rose. "Minor differences?" he exclaimed, "What are these minor differences? Are they not between a system which founds education upon religion, and universally and by law connects the superintendence of that education with the Established Church of Scotland, on the one hand, and a system, on the other hand, which not only severs that connexion, but which provides no religious substitute whatever?"

The bill was thrown out, in spite of the support of the Ministry, by thirteen votes (June 4, 1851) on the motion of Mr. Forbes McKenzie, who gave no reason for opposing it except that it abolished the test for schoolmasters, and deprived the Church of the exclusive management. It was thus abundantly evident that no system of national education, even if the people of Scotland found one on which they were agreed, would be allowed to become law, unless it satisfied the views of English, Welsh, and Irish members on the point of religious instruction. Nevertheless Lord Advocate Moncreiff took up the question on behalf of the Government in the session of 1854.

It seemed the very time for dealing with a great and pressing matter which could not, in the existing state of public opinion, be settled except by some prudent compromise. The hard and fast lines of party had been well-nigh obliterated in Scotland since an administration whose policy was liberalism without rashness, and conservatism without

*test, Declaration, and Testimony on the subject of National Education: Acts of Assembly, June 4, 1849.*

<sup>1</sup> This bill was brought in by Viscount Melgund, member for Greenock, where he had defeated Mr. Murray Dunlop in 1847. He succeeded his father, the second Earl of Minto, in 1859.

obstinacy, had been formed. The Ministers of the coalition had already proved their interest in education by bringing in, the year before, a bill for England, which had been in charge of Lord John Russell, who for a time had hoped that, with the help of Lord Granville in the House of Lords, it might become law. The Government, too, was so composed that a reasonable plan for Scotland might be expected. Churchmen might be sure that their claims would be favourably treated by Lord Aberdeen and Sir James Graham. Graham, who had voted against Lord Melgund's bill, knew the perils of the religious question, and had, indeed, for many years thought them insuperable. "Religion," he wrote to Brougham in 1841, "the key of education, is in this country the bar to its progress." Free Churchmen might rely on Mr. Moncreiff, who was one of themselves, and also on Lord Elcho, the Scottish Lord of the Treasury, whose opinions were liberal in the best sense of the word. There might be trouble in wringing money from the treasury, of which Mr. Gladstone, as Chancellor of the Exchequer, was the faithful and even jealous guardian; but in the session of 1854 the coalition Cabinet, with the eastern question in its hands, was ready to leave the whole responsibility for the Scottish education bill with the Lord Advocate.

On the 23rd of February, 1854, just a month after the meeting in Edinburgh, Mr. Moncreiff introduced his bill. "Every citizen," he said, "who comes to years of maturity without having had within his reach the means of ordinary instruction reflects discredit on the Government under which he lives." The education of the people was not a matter of choice, but of duty. "If we do not encounter and overcome the ignorance of the people, the ignorance of the people will overwhelm us. The plain truth is this, that with all our boasted prosperity—while we are founding dynasties in another hemisphere, and bringing our argosies home from the ends of the earth—while we are extending the cords of our political freedom, and making strides in science, and arts, and civilization, there is all this time growing up in

the very heart of our social system, in the very centre of our mighty cities, and at the very base and root of this immense community, what I do not err in terming a savage and barbarian race—tied to you by no sympathy, bound to your institutions by no common link.” The question of education, he said, would never be dealt with in earnest, unless the danger of this state of things was realized. “My great aim is not a theoretically perfect system, but the practical education of the people.”

Many of the details of Mr. Moncreiff’s first education bill are of little interest now ; but its leading provisions may be given. A central authority, or Scottish education board, was to be constituted. It was to consist of six members appointed by the Crown, four appointed by the Scottish Universities, and the Lord Advocate and Solicitor-General *ex officio*. Its first duty was to make a complete educational survey of the country. The exact number of schools, and the exact number of families the children of which were not sent to school, were to be ascertained, along with a mass of other facts relating to the actual state of education.

No change was proposed in the method of appointing the parish schoolmasters. The choice was left in the hands of the landowners and the clergymen, who were to act as a school committee in each parish. This was meant as a concession to the Established Church. But the test was to be abolished, so that the office of schoolmaster might be open to nonconformists as well as Churchmen. “It is proposed,” said the Lord Advocate, “by means of public money to put these national schools in a much more efficient position ; and when national funds are to be devoted to such a purpose, I declare I do not see by what argument I could restrict the choice of masters to one half of the persons qualified in Scotland.”

Hitherto the parish schools had been managed by the presbyteries, who had inspected them periodically. But, said Mr. Moncreiff, this presbyterial superintendence had been defective ; and in future the school committee in each

parish, that is to say the landowners and the minister, was to manage the school, under the control of the central authority.<sup>1</sup> There was a clause providing that the salaries of the teachers were to be raised.<sup>2</sup>

To meet the religious difficulty the bill provided that every school committee was to appoint certain stated hours at which children should not be bound to attend if their parents or guardians objected. Thus the principle of the bill was that though there must be religious instruction, it was not to be compulsory. Each school committee was to decide what religious instruction should be given; but a clause in the preamble indicated that no change in the old Scottish system of religious teaching was contemplated.

"I shall be more than rewarded," Mr. Moncreiff said at the end of his statement, "if I have contributed, even by a single step, to restore to Scotland the character which once she held throughout Europe as the nursery of learning and of virtue."<sup>3</sup> He was complimented on all hands, and by members on both sides, for his speech, which Mr. Spencer Horatio Walpole said was "as beautiful for its sincerity as it was perspicuous in its details."<sup>4</sup> Leave was given; and the bill was brought in, backed by the Lord Advocate, Lord John Russell, and Lord Palmerston. Then the conflict of opinions began.

<sup>1</sup> In places where the educational survey showed they were needed, "public schools" were to be opened. For these the consent of the ratepayers had to be obtained in rural districts, and the school committee were to consist of landowners and ratepayers in equal numbers. In urban districts the committee was to be the town council, and the consent of the ratepayers was not required.

<sup>2</sup> The amount of salary paid to teachers had always been fixed by the average price of oatmeal over Scotland for the preceding twenty years. In 1853 this average fixed the salaries at a minimum of £19 19s. 6d, and a maximum of £26 12s. 7½d. Besides this there were school fees. For fifteen shillings a boy could obtain an education which would prepare him for a University; but the custom was to take no fees from the parents of very poor pupils. The average income of a teacher in the parish schools of Scotland was about £50, with a house and garden given by some landowner.

<sup>3</sup> *Speech of the Lord Advocate of Scotland in the House of Commons, February 23, 1854, on the Bill for the Education of the People of Scotland.*

<sup>4</sup> *Hansard*, cxxx. 1182.



The Established Church received the bill with "surprise and regret"; repudiated as "untrue and calumnious" the allegation that the presbyterial superintendence of schools was defective; condemned the "unholy rejection of the evangelical test for ascertaining the religious belief of the teachers"; resolved to defend to the last its exclusive control over the parish schools; and "solemnly declare that the measure, as a whole, is one against which the Church of Scotland, true to her constitutional principles, and determined to struggle for what privileges still remain to her, is bound to raise both her complaint and protest."<sup>1</sup>

The Free Churchmen suggested amendments, particularly that the interpretation clause should make it clear that "religious instruction" meant the instruction hitherto given in Scotland. But they wished the bill to pass even without amendment, and resolved to petition the House of Commons in its favour. "The truth is," one speaker said, "that the more I have seen of men of various sects and opinions pressing their particular views in regard to the bill, I feel thereby the more inclined to swallow it as a whole; to express my cordial concurrence in it as a general measure; and to shrink from taking any course which might seem to endanger the bill, or to throw an influence in the way of obstructing the passage of it. This is a very important era in the history of the country, and we should make a combined effort to secure an efficient national system of education."<sup>2</sup>

Those dissenters who carried the voluntary principle to its logical conclusion were against the bill on the ground that the State had no more right to provide religious instruction for children than for their parents. If, they said, the schoolmaster is paid out of public funds he becomes a State official, and therefore must not teach any form of religion. Thus the extreme Churchmen and the extreme dissenters

<sup>1</sup> *Acts of Assembly* (Commission), March 22, 1854.

<sup>2</sup> *Acts of Free Church Assembly* (Commission), March 21, 1854: *Life of William Cunningham, D.D.*, p. 305.

had one thing in common,—they would rather see Scotland a half-educated nation than make any concession.

Dr. Guthrie was “thoroughly disgusted and sickened with the violence of the Established Church on the one hand, and of the extreme section of the Voluntaries on the other.” The Lord Advocate wrote from London asking him to speak out. “You have only,” he said, “to make one of your manly, fearless addresses, and you will confirm more waverers than all the Voluntaries can shake. Depend upon it, names weigh far more than numbers up here, and you and Adam Black would, single-handed, make all the agitators kick the beam.” Guthrie did speak out, and very plainly, to the extreme dissenters, telling them that there could be no hope of union between the free churches of Scotland unless voluntarism was presented in a less offensive light than as a mere obstruction to social reform.<sup>1</sup>

A majority of the Scottish members were in favour of the bill. It was impossible to please every one, and they thought the Lord Advocate’s plan was as fair a compromise as could be devised. Recent statistics proved beyond all doubt that an education act was needed.<sup>2</sup>

On the 12th of May Mr. Moncreiff moved the second reading.<sup>3</sup> The opposition to the bill was led by Mr. Stirling, the member for Perthshire, who said that every one had thought Scotland was remarkably well educated “until the Lord Advocate came down here to tell us the contrary, in an excellent speech and an indifferent bill.” Then he complained of the proposals for depriving the Church of the exclusive control of the parish schools. It all turned on that. “We have made the Lord Advocate and the Government,” Mr. Stirling said, “a proposition which was briefly this:—leave the connexion between our existing parish schools and the Church unsevered, and we will support you

<sup>1</sup> *Autobiography and Memoirs of Thomas Guthrie*, ii. 299–300.

<sup>2</sup> *Return showing the proportion of scholars to the population in each county in Scotland, so far as it can be exhibited by the Census of 1851: Parl. Papers, 1854–55 (302), xli. 431.*

<sup>3</sup> *Hansard*, cxxxiii. 232.

in the reforms you propose to make in these schools, and acquiesce in the educational experiment you propose to try. This proposition was rejected ; and we have therefore no alternative but the notice I have given—to move that the bill be read this day six months.”<sup>1</sup> Lord Elcho, who followed, said he regretted very much that “my honourable friend, whose name stands so deservedly high in the literary world, should have commenced his career by the exhibition of such illiberality as prompted him this evening to propose the rejection of this measure.”

When, after a debate of seven hours, the Lord Advocate replied and the House divided, the issue was uncertain. Three hundred and seventy-seven members took part in the division. The Scottish members supported the second reading by nearly three to one, thirty-six voting for it, and only fourteen against it. But a solid phalanx of Conservatives, English dissenters, and some Roman Catholics went against them ; and the bill was lost by a majority of nine.<sup>2</sup> This, said the *Scotsman*, “gives to the sectarian and monopolist party a hollow and temporary triumph.” By the Church the news that the bill had been rejected was received with much satisfaction.<sup>3</sup>

The members from Scotland had been outvoted, not for the first time, on a purely Scottish question. This gave some point to a petition which had been presented to the House of Lords about a month before, from a body called “The National Association for the Vindication of Scottish Rights.”

This body had been formed in the summer of 1853. The president was the Earl of Eglinton. Ten Scottish peers

<sup>1</sup> *Speech on the Second Reading of the Lord Advocate's Bill*, by William Stirling of Keir, Perth, 1854.

<sup>2</sup> Ayes 184, Noes 193.—*Hansard*, cxxxiii. 232.

<sup>3</sup> “The General Assembly express their cordial satisfaction with the rejection of the educational measure recently introduced into the House of Commons by the Lord Advocate, and record their warm gratitude to those members of the Legislature, and other influential persons, who advocated the rights and privileges of this Church, and the cause of religious education in Scotland.”—*Acts of Assembly*, May 24, 1854.

were vice-presidents.<sup>1</sup> Mr. Duncan McLaren, then Lord Provost of Edinburgh, the magistrates of twenty-nine towns, and some three hundred men of various callings, joined the movement, the object of which was to call attention to certain grievances which were alleged to arise out of the connexion with England. They did not propose that the Act of Union should be repealed and the Scottish Parliament restored ; but they insisted that the representation of Scotland at Westminster was so inadequate that Scottish business was neglected ; that Scotland was unfairly treated in matters of finance, the public departments being starved ; and that, though the terms of union were apparently just, they had not been fairly carried out. “ Within our own borders we were to have our own laws and institutions, and our own local administration of law, a local ecclesiastical polity different from that of England, and, in fact, a national existence as a people quite distinct from the southern portion of the kingdom. We were to be united with England, but not merged into England.” But now a vigorous effort alone could save Scotland from falling into the position of an English county, and the time had come when Scotsmen must choose one of two alternatives. They must either sink their nationality, or resolve to retain what legally belonged to them under the Treaty of Union.<sup>2</sup>

The Association laid great stress on the need for some change in the system of Scottish administration. “ The necessity for a Secretary of State must,” they said, “ be apparent to all who understand that the Lord Advocate is unable to attend to the treble duties of adviser of the crown, or public prosecutor and superintendent of the whole criminal proceedings of Scotland ; of Secretary of State and framer of bills for a country daily increasing in wealth,

<sup>1</sup> The Marquess of Ailsa, the Earls of Erroll, Caithness, Buchan, and Dundonald, Lords Gray of Kinfarns, Colville of Culross, Elibank, Berriedale, and Cochrane. Half a dozen names, taken at random from the list of members, may be given : Sir Archibald Alison, Professor Edmonstone Aytoun, Sir Thomas Gladstone of Fasque, Hugh Miller (editor of *The Witness*), Professor Simpson (Sir James Y. Simpson), Mr. Noel Paton, the artist.

<sup>2</sup> *Address to the People of Scotland and Statement of Grievances*, 1853.



population, and legislative business ; and of attendance to his private practice, which he cannot be expected either to forget or forego. It is absurd to conceive that the mere fraction of one man's time, however able, is sufficient to govern the most industrious country in Europe, or that every Lord Advocate must infallibly be a statesman, and fit to undertake the vast amount of legislation appertaining to such a country as Scotland."

This was certainly the weak point in Scottish administration. A bill, Lord Eglinton said at a meeting of the Association, is before Parliament. A deputation is sent up to London, and goes to the Home Office. "Oh no!" says the Secretary of State,"Home means England. I know nothing about Scotland. It is in the hands of the Lord Advocate. Go to him." The deputation returns to Scotland and finds the Lord Advocate busy pleading in the Parliament House.

Cockburn laughed at the manifesto of the National Association. "I have seldom," he said, "seen greater nonsense." But his final opinion on this question of the Secretary of State, written only about a fortnight before his death, was against leaving the whole management of Scotland to the Lord Advocate. "A peer," he wrote, "cannot be Lord Advocate, but he may be a great public administrator. Why then should he not administer Scotland? A Lord Advocate may be, and since 1800 has been, ignorant and in every way incapable, and raised to that office solely for his party services. Why should he have the government of the country as an appendage of his party position?"<sup>1</sup>

This was very true ; but there was no strong feeling in favour of a change in Scotland at that time. It is significant that only one Scottish member of Parliament attended the meeting called by the National Association. In some aspects the movement was grotesque. The list of grievances included matters which were described at the time as "paltry and unworthy of a national agitation."<sup>2</sup> It was difficult

<sup>1</sup> *Journal*, April 11, 1854.

<sup>2</sup> *Reasons for Declining to join the National Association*, 1854.

to rouse patriotic indignation because the red coats of the Edinburgh postmen were contracted for and paid for in London ; and the business men of Glasgow did not feel a burning sense of wrong when they were told that the heraldic emblems of Scotland, as quartered upon the royal standards and union flags, had been “ degraded from their first position to an inferior, and their place usurped by those of England.”

The most tangible grievances were the difficulty of finding time for Scottish business in Parliament, and the fact that Scotland, though contributing far more than Ireland to the imperial exchequer, had far fewer representatives in the House of Commons. But there was no driving force behind this agitation ; and it passed out of sight, to re-appear in the form of that demand for the revival of the Scottish Parliament, and “ Home Rule ” for Scotland, which has been heard from time to time during the last quarter of a century, and of which perhaps Lord Eglinton and his friends were unconsciously the pioneers.

Meanwhile the clouds which had been gathering in the East for so long had burst. At the end of March (1854) the formal declaration of war against Russia had been promulgated. In September the Black Sea was crossed ; and the sufferings of that Crimean winter roused the tempest of indignation which culminated in the defeat of the Government.<sup>1</sup> Lord Palmerston’s administration, which followed, was at first a re-construction of the coalition, without Lord Aberdeen, Lord John Russell, and the Duke of Newcastle. In a few days, however, its complexion was changed by the sudden resignation of the Peelites ; and it then became virtually Whig.<sup>2</sup>

<sup>1</sup> Mr. Roebuck’s motion for an inquiry into the conduct of the war was carried, by 157, on January 29, 1855, *Hansard*, cxxxvi. 1230.

<sup>2</sup> The Peelites (except the Duke of Argyll and Lord Canning) retired when they found that Lord Palmerston was about to meet the wishes of the House of Commons by appointing the committee for which Mr. Roebuck had moved. A few hours before he resigned Mr. Gladstone told the Prince Consort that he felt “ the greatest difficulty in letting the House of Commons succeed in what he must consider a most unconstitutional, most presumptuous, and most dangerous course, after which it would be impossible for the Executive ever to oppose again the most absurd and

The opinion of Liberals in Scotland seems to have been that while the Peelites might have done their duty to their consciences, Lord Palmerston and those who remained with him had done their duty to the country. The Conservatives refused to blame the coalition for going into the war, or, though they desired a change of Government, to make the disasters in the East a party question.<sup>1</sup> All Scotland thought Lord Palmerston was the best man to carry on the war.

It is easy to understand why he was so popular beyond the Tweed. The Whigs of Scotland, during their arduous struggle for reforms at home, had never lost sight of the popular movements on the continent. Every parish school-boy was accustomed to recite how "Freedom shrieked, as Kosciusko fell!" "We submitted," it was said in the press just before the Whig victory of 1832, "in former times to the burdens which you laid upon our consciences. We made our windows glimmer, if not blaze, for the partition of Saxony, the annihilation of Venice, Genoa, and Poland, and mounted a white cockade for the restoration of the Bourbons, from which we augured nothing but evil to the cause of liberty." And this sympathy with the cause of liberty abroad was as strong—if not even stronger—in the fifties. Kossuth, Mazzini, above all Garibaldi, were almost as great heroes in Scotland as in Hungary and Italy; and Father Gavazzi's glowing orations were applauded by popular audiences in different parts of the country.<sup>2</sup> Lord John Russell, Mr. Gladstone, and

preposterous demands for inquiry."—*Letters of Queen Victoria*, February 21, 1855. About the same time he told the Queen that "he could see but one danger to the Throne, and that was from encroachments by the House of Commons." For the views of the Peelites at this crisis see Lord Morley's *Life of Gladstone*, iv. vi., and Mr. Parker's *Sir James Graham*, ii. 268. When we think how popular Mr. Gladstone afterwards became in Scotland, it is curious to note the severe criticisms of Scottish Liberals on his conduct at this crisis, though the conversations recorded in the Queen's letters were of course at that time unknown.

<sup>1</sup> "If we would discover the real authors of the war, we would find them in those who counselled admiring and assenting multitudes at Manchester that the age of war was passed, that we could disband our troops, and sell our ships of the line. Their names are Richard Cobden, John Bright, and Joseph Sturge."—*Blackwood's Magazine*, February, 1855.

<sup>2</sup> Three of these speeches, delivered at Edinburgh, St. Andrews, and



other champions of human liberty were overshadowed for a time by the great personality of Lord Palmerston, the friend of Italy and the enemy of Austria ; who had sent the British fleet to thwart the demands of Russia for the surrender by Turkey of political refugees ; who had incurred the enmity of the Court in England by opposing absolutism on the continent ; and who was now the foremost man in the country, placed in power to carry on a war which was intensely popular, because it seemed to be waged in defence of the weak, and of British interests against the ambition of the most absolute ruler in Europe, the great reactionary who had helped Austria to baffle the hopes of the Hungarian and Italian patriots.

In the Cabinet Scotland was represented by the Duke of Argyll, who was Privy Seal, and Lord Panmure, who had succeeded the Duke of Newcastle at the War Office.<sup>1</sup> In the House of Commons Scottish business was in the hands of Mr. Moncreiff, who remained in office as Lord Advocate.

Some of the Radicals, who complained that the Palmerston administration was merely a family clique of Whigs, were not satisfied ; and the question of taking the management of Scotland from the Lord Advocate was raised by Mr. John Macgregor, one of the Members for Glasgow, who, on the motion for the adjournment of the House (June 22, 1855), moved: " That it is expedient that the office of Secretary of State for Scotland be re-instituted." He was received with cries of " Order " ; and the Speaker said that he could not propose such a resolution as an amendment to the motion for adjournment. He continued, however, to speak amidst interruption. Mr. Moncreiff declined to debate the

Aberdeen, in August and September, 1851, are printed in Nicolini's little pamphlet on the life of Gavazzi. He spoke in Italian, with some one on the platform to interpret, who often knew almost nothing of the language, and gave only a general idea of what the orator was saying.

<sup>1</sup> Mr. Fox Maule had become Lord Panmure in April, 1852, when his father died. In 1860 he succeeded his cousin, the 10th Earl and 1st Marquess of Dalhousie, in the entailed estates, and in the Earldom of Dalhousie.



question, on account of the irregular way in which it had been raised ; and the subject was allowed to drop.<sup>1</sup>

There was a general feeling that, though the system of administering Scottish affairs through the Lord Advocate was certainly open to criticism, so complete a change would require very careful consideration. No assistance in making any such change was to be hoped for from Lord Palmerston. He and the Lord Advocate were on the best of terms. Besides piloting Scottish bills through the House of Commons, Mr. Moncreiff had established his reputation as an efficient spokesman for the Government on general business ; and in April, 1856, at the close of the war, he was put up to answer Lord John Manners in the critical debate on Mr. Whiteside's motion attributing the fall of Kars to want of foresight and energy on the part of the British Government.<sup>2</sup>

The Ministerial majority on this occasion was large, partly because so many Conservative Members were absent from the division. This perplexed and annoyed Lord Derby and Sir William Jolliffe, the Conservative Whip.<sup>3</sup> They attributed the disorganized state of their party to the unpopularity of Mr. Disraeli, to the public confidence in Lord Palmerston, and still more to the conduct of the Peelites. Lord Derby saw that the breach in the Conservative ranks, which he thought might have been healed if the Peelites had stood neutral in the session of 1852-3, had been widened by the formation of the coalition Government. But the Peelites had been completely isolated ever since their separation from Lord Palmerston ; and the negotiations on which Mr. Gladstone entered with the view of joining Lord Derby and Mr. Disraeli might perhaps have ended in his return to the main body of his former party, if the Ministers had not been defeated on Mr. Cobden's motion condemning their conduct in China.<sup>4</sup>

<sup>1</sup> *Hansard*, cxxxix. 19.

<sup>2</sup> *Hansard*, cxl. 1594. The garrison of Kars had surrendered in November, 1855.

<sup>3</sup> Sir W. Jolliffe, M.P. for Petersfield, afterwards Lord Hylton (1866).

<sup>4</sup> March 3, 1857.

During the debate the Opposition challenged the Ministers to submit their case to the nation ; and Lord Palmerston told the Queen that his firm belief was that " the present Government has the confidence of the country in a greater degree than any other Government that could now be formed would have." When, therefore, after four nights of argument, a combination of Conservatives, Radicals, and Peelites made up a majority of sixteen against him, he advised a dissolution. The general election of 1857 followed, when Mr. Cobden was defeated at Huddersfield ; when of four candidates who stood for Manchester, Mr. Bright was at the foot of the poll, with Mr. Milner Gibson sharing his defeat ; when Mr. Edward Miall lost his seat for Rochdale ; and when, all over the country, Lord Palmerston carried everything before him. " P.'s popularity is wonderful," Lord Shaftesbury wrote. " Strange to say, the whole turns on his name. There seems to be no measure, no principle, no cry, to influence men's minds and determine elections. It is simply ' Were you, or were you not ? Are you, or are you not, for Palmerston ? ' "

Mr. Cobden had always known that the Manchester School was weak in Scotland. " Nowhere," he once wrote to Mr. Duncan McLaren, " has the movement fewer partisans than in Scotland, and the reason is obvious—first, because your heads are more combative than even the English, which is almost a phrenological miracle ; and secondly, the system of our military rule in India has been widely profitable to the middle and upper classes in Scotland, who have had more than their numerical proportion of its patronage. Therefore the military spirit is very strong in your part of the kingdom."

This was plausible, but a mere theory, guesswork. Mr. Cobden had other grievances against Scotland. Accustomed to plunge his hand deep into the pockets of rich English manufacturers, he forgot that the pockets of his Scottish audiences were not lined with gold, and complained that to name money to them was like reading the Riot Act for dispersing them. And there was some-

thing even worse in the nature of Scotsmen. "They care too much for speeches by mere politicians and Whig aristocrats." Now, during the general election of 1857, Scottish confidence in Lord Palmerston, who seemed to Mr. Cobden "a brazen image, as hollow as it is impudent," was unmistakeable.

Persons who, as a rule, took no interest in party politics, declared themselves in favour of the Government. It took some courage to face a Scottish audience, and say a word against Lord Palmerston, or in favour of the Manchester School. The Member for the city of Aberdeen had voted with Mr. Cobden ; and this vote had given such displeasure that he withdrew rather than face his constituents. Another Liberal, the Member for Clackmannan and Kinross, who had defeated so strong a local candidate as Mr. W. P. Adam in 1851, and had been re-elected without a contest in the following year, had also voted against the Government.<sup>1</sup> His constituents refused to accept him ; and Lord Melgund, who had been without a seat since 1852, was now elected as a sound Palmerstonian.

In Edinburgh there was at first some canvassing behind the scenes against Mr. Cowan, and also against Mr. Adam Black, who had represented the city since the retirement of Macaulay (1856). But they had both voted with Lord Palmerston ; and no candidate could be found to oppose them.

Mr. Moncreiff had, as usual, a contest in the Leith district. His Radical opponent, Mr. William Miller, a London merchant who was a native of Leith, made haste to assure the electors that, if he had been their Member, he would have voted against Mr. Cobden, and asked them to return him on the cry of "No Lord Advocate for Leith !" But the feeling against the Manchester School was so strong that a Conservative, who had hitherto always opposed the Lord Advocate, moved a vote of confidence in him as a protest, he explained, against the way in which

<sup>1</sup> Mr. Adam of Blair Adam was elected for Clackmannan and Kinross in 1859, and sat for that constituency till after the general election of 1880.

the Conservative party had treated Lord Palmerston's Government in the division on Mr. Cobden's motion. It was the same everywhere. Lord Palmerston's triumph was complete ; and nowhere more complete than in Scotland. From the rest of the kingdom some twenty-five Radical opponents of the Government were returned, but none from Scotland. Hitherto, ever since 1832, there had always been a Conservative majority in the counties, and at least one Conservative returned from the towns. At this general election the counties were equally divided between the two parties, and all the town members were Liberals.<sup>1</sup>

While the country was in the thick of the general election, and busy with public affairs, the law officers were quietly investigating a scandal of private life in the west of Scotland ; and a criminal trial followed which, though far less important than the trial of the Glasgow cotton spinners, caused nearly as much excitement, and was the most interesting case in which Mr. Moncreiff appeared as public prosecutor.

A house in Blythswood Square at Glasgow was at that time the home of a Mr. and Mrs. Smith, who lived there with a family of sons and daughters. They were people of regular habits ; business and dinner parties all week ; church, " United Presbyterian," without fail every Sunday ; and prayers punctually at nine o'clock in the evening. In summer they usually spent some months at Rowaleyn on the Gareloch. Nothing could have been more commonplace ; but the eldest daughter, Madeleine, a dark-eyed, handsome girl of twenty-one, with black hair and a fine complexion, who had been educated at a boarding-school near London, became suddenly the central figure of a strange drama, which began as vaudeville, and ended in dismal tragedy.

Near Blythswood Square lived Mr. William Minnoch, a partner in the well-known firm of John Houldsworth and

<sup>1</sup> In the Leith district, however, Mr. Moncreiff's majority was only 120. The numbers were Moncreiff 821, Miller 701. The Radicals were gaining ground rapidly, and he displeased them by his dislike to the ballot. When asked if he was in favour of it he replied : " I disapprove of the ballot entirely and completely. The vote of an elector is a public trust, and the only safeguard is that it should be subject to public opinion."



Company. He had been paying court for some time to Madeleine Smith ; and on the 28th of January, 1857, he made a proposal of marriage, which she accepted. No time was fixed for the wedding ; but in February it was rumoured in Glasgow that they were engaged. At the beginning of March the Smiths went to Bridge of Allan, where they remained till the 17th. Mr. Minnoch visited them there ; and it was arranged that the marriage was to be in June. " The day I part from friends I always feel sad," Madeleine Smith wrote to Mr. Minnoch after he had left, " but to part from one I love as I do you, makes me feel truly sad and dull. My only consolation is that we meet soon again."

She returned to Glasgow with her father and mother, and they dined at Mr. Minnoch's house on the 19th of March. On the 25th she met him at another dinner party. Next morning Mr. Minnoch called at Blythswood Square, and was told that she had disappeared. On receiving a hint from her father that " an old love affair " might be the cause of her absence Mr. Minnoch and one of her brothers started for Rowaleyn, and found her on a steamboat at Greenock. She gave no explanation of why she had left home ; but there was clearly some mystery, and she promised to explain everything if she was not pressed at that time. She was then taken back to her father's house, and left there.

This was on Thursday, the 26th of March. On the following Saturday she told Mr. Minnoch that she had written to a Frenchman, asking him to give her back some letters ; but she did not mention his name. On Tuesday the 31st she said the Frenchman was a M. Emile L'Angelier, who had been dead for more than a week, and alluded to a rumour that he had died of arsenic poisoning. Till then Mr. Minnoch had not known of her acquaintance with L'Angelier. But, though Mr. Minnoch had been kept in the dark, Miss Smith and L'Angelier had been on very intimate terms for a long time. A casual introduction had led to an attachment, which was forbidden by Miss Smith's parents. But the couple were infatuated with each other. There were secret meetings at Rowaleyn and in Glasgow, where L'Angelier

had been in the house at Blythwood Square late at night. They made some vague plans for a private marriage; but the letters which Miss Smith wrote to her lover prove how matters really stood. "Sweet and much beloved Emile. . . . I am your wife before God. . . . I think a woman who can be untrue should be banished from Society. . . . I can never be the wife of another after our intimacy"; and a great deal more, in hundreds of letters which are quite unfit for publication. But L'Angelier heard of Mr. Minnoch's attentions, and was jealous. The lady protested. It was all gossip. He must not believe it. "Sweet darling, at this moment my heart and soul burn with love for thee, my husband, my own sweet one. Emile, I adore you." So wrote Madeleine Smith to L'Angelier on the 23rd of January. On the 28th she promised to marry Mr. Minnoch.

In February, when rumours of her engagement were spreading, she tried to break with L'Angelier, telling him she had ceased to love him, and asking him to return her letters. He replied by threatening to expose her. She was in despair. "Emile," she wrote, "for the love you once had for me, do nothing till I see you. . . . I am the most miserable guilty wretch on the face of the earth. When I ceased to love you, believe me it was not to love another. I am free from all engagement at present. . . . Despise me, hate me, but do not make me a public scandal." Still the Frenchman refused to send back the letters. Then, in the middle of February, Miss Smith renewed her protestations of love, and wrote proposing to resume their secret interviews.

On Sunday the 22nd of March she was in Glasgow, having returned from that visit to Bridge of Allan during which the date of her marriage had been fixed for June. L'Angelier was now at Bridge of Allan, where on that Sunday morning he received a letter from Miss Smith, asking him to come and see her. "Oh come," she wrote, "sweet love, my own dear love of a sweetheart." He left Bridge of Allan, and reached his lodgings in Glasgow about 8 o'clock in the evening. He was in the highest spirits, told his landlady, who

knew of his affair with Miss Smith, what had brought him back, and went out about nine o'clock. At two next morning he rang the bell, and was found on the doorstep suffering agonies of pain. A few hours later he died. There was a post-mortem examination; the doctors reported that the cause of death was arsenic poisoning; the letters were found; other investigations were made; on the 31st of March, a few hours after her last interview with Mr. Minnoch, Madeleine Smith was arrested; and three months later she was brought into the High Court of Justiciary at Edinburgh, to stand her trial for murder. The charges were that twice, in February, she had given poison to L'Angelier with intent to kill, and had, in March, successfully done so, and was thus guilty of murder.

The trial occupied nine days—June 30 to July 9, 1857—and a very strong case was presented against the prisoner. Her motive, if she was guilty, seemed clear—to close L'Angelier's mouth, and escape an exposure which would break off her marriage, and ruin her character. It was proved that just at the time when L'Angelier was threatening to expose her she tried to buy prussic acid, and had made purchases of arsenic. It was proved that L'Angelier had been twice taken ill after being with her; but there was no evidence that she was in possession of arsenic on one of these occasions, and the judges held that certain memoranda in the handwriting of the deceased, which might have made this part of the case stronger against the accused, could not be admitted as evidence.

The case really came to turn on the question of whether L'Angelier and the prisoner had or had not met on the night of Sunday the 22nd of March. She had bought arsenic twice during the previous fortnight, some on the 18th, the day after she returned from Bridge of Allan, having fixed the date of her marriage, and just before she wrote the letter which brought L'Angelier back to Glasgow. Her explanation that she used the poison as a cosmetic was not supported by sufficient evidence. A theory, put forward for the defence, that L'Angelier might have

committed suicide does not seem even plausible. It was hardly disputed that he left his lodgings at nine o'clock intending to visit Blythswood Square. He was seen going in that direction at twenty minutes past nine, and called on a friend who lived within five minutes' walk of the Smiths' house. After that nothing was known of his movements till he returned home in a dying condition. The presumption was that he had gone to Blythswood Square; and the theory of the prosecution was that the accused had put arsenic in a cup of coffee or cocoa which it was proved she had been in the habit of giving him when he went to see her. But doubts were raised by the defence as to whether the prisoner had expected him that night; there was no direct evidence that they had actually met; and through that narrow loophole the prisoner escaped with a verdict of "not proven."<sup>1</sup>

Mr. Moncreiff conducted the prosecution with absolute impartiality, in accordance with the tradition of his office, which had seldom been broken since the close of the seventeenth century except on a few occasions when political bias had tempted some of the Lord Advocates to strain their powers to convict persons accused of offences against the State. This tradition—that the public prosecutor must not throw into the performance of his duties the ardour of an advocate, but must exhibit the calm impartiality of the Crown, of which he is the representative—is, indeed, so well understood in Scotland that if a Lord Advocate, or any of his deputed, betrayed eagerness, or personal interest in the issue of a trial, they would be thought guilty of a breach of professional decorum. Lord Advocate Moncreiff's management of this case, it was noticed at the time, was so conspicuously fair, so grimly impartial, and yet so full of deadly force, that when Dean of Faculty Inglis, afterwards himself Lord Advocate, rose to speak for the defence, the argument he had to meet appeared unanswerable.

<sup>1</sup> Lord Justice Clerk Hope, who presided, summed up favourably to the prisoner. I recollect, as a boy, hearing a lady say when the news of the verdict came, "The Justice Clerk could not resist those eyes of hers."



But when Mr. Inglis sat down the case did not seem so clear. And he had not only thrown doubt on the evidence for the Crown, but with masterly art had transferred the sympathies of the jury from the victim to the accused, from the "unknown adventurer," as he called L'Angelier, who, by refusing to give up the letters, had shown himself "dead to all feelings of humanity," to the "gentle, confiding, and affectionate girl, the ornament and pride of her happy home."<sup>1</sup> In his hands the squalid intrigue became a romance; and he spoke with such eloquence that it seemed as if her lies to L'Angelier, her treachery to the man she had promised to marry, her shameless letters, all her misdeeds, must have been caused entirely by "the corrupting influence of the seducer." He was the last man in the world to infringe that etiquette of the bar which rightly forbids an advocate to say that he personally believes his client to be innocent; but he spoke of his "strong and overwhelming conviction" of what, on the evidence, the verdict ought to be, and created the impression that he really thought there would be a failure of justice, if his client was convicted. He besought the jury to think of the awful consequences of a mistake. It might, he said, be their lot, if the truth was discovered, to sit in judgment on the real criminal. "Would not," he asked, "your souls recoil with horror from the demand for more blood? Would you not be driven to refuse to discharge your duty in condemning the guilty, because you had already doomed the innocent to die?" He told them that if they brought in a verdict of guilty "the recollection of this day and this prisoner would haunt me as a dismal and blighting spectre to the end of life." His lips quivered. His voice shook. It was a wonderful performance. Edmund Kean himself could scarcely have surpassed it. The prisoner stood in deadly

<sup>1</sup> This was a flight of imagination. "We heard," said the Lord Justice Clerk, in his charge, "a good deal said by the Dean of Faculty as to the character of the prisoner. We have no evidence on the subject except what her letters exhibit; and no witness to character was brought; but certainly these letters show as extraordinary a frame of mind, and as unhallowed a passion as perhaps ever appeared in a court of justice."

peril of her life ; and this great advocate, whose duty it was to try to save her, having fought every point day after day with extraordinary ability, used such high art in this last appeal that every word seemed to come from the bottom of his heart. His words were so touching that some of those who were in court could hardly refrain from tears.<sup>1</sup>

At the trial of Madeleine Smith the Lord Advocate and the Dean of Faculty were seen at their best as rival leaders of the bar. But their rivalry ceased outside the law courts, where they worked together in a movement for improving the Scottish Universities, which ended in legislation, initiated by Mr. Moncreiff and afterwards completed by Mr. Inglis.

The four Universities of St. Andrews, Glasgow, Edinburgh, and Aberdeen had different constitutions ; but they had one merit and one defect in common. They were all four open to students of every class, and the instruction they gave was, as Mr. Moncreiff put it, "carried on at a cost which practically comprehends all who can afford to spare the necessary time from daily labour." This made them truly national. But the standard of education was, in many

<sup>1</sup> There are numerous contemporary reports of this trial. The best account will be found in *Trial of Madeleine Smith*, edited by A. Duncan Smith, Advocate (*Notable Scottish Trials*), 1905. After her release Miss Smith wrote to the chaplain of the prison at Edinburgh a letter, the contrast of which with her love letters to L'Angelier, and the cool way in which she treats the whole affair, make it almost a study in psychology : "After the kind interest you showed me, I think it but fair I should let you know of my safe arrival at home. I am very well and my spirits very good. I found Mama far from well. But I trust she shall soon be convalescent. The feeling here is, I rather fear, strong against me, so I rather think I shall have to leave Scotland for a few months. But the present state of Mama's health makes it impossible for me to make any arrangement at present. I was not at all pleased with the verdict, but I was charmed with the loud cheer the crowd gave me. I got out of Edinburgh in the most private manner possible. I trust the painful and unhappy affair may tend to do us all great good. I see a different feeling pervades our family circle already. I am so glad that they all view it as an affair sent from God for past errors and crimes. And if this be the means of drawing a family to the feet of Christ, I shall not grumble at the pain that sad event has cost me. I may live to hear the family exclaim 'that it was the most blessed day of their life the day I was cast into prison.' God grant it may be so." A similar letter, written to the prison matron, but without the pious sentiments, is printed in the *Notable Scottish Trials* report, Append. VI.

respects, far below what the standard of University education ought to be. This was particularly the case in the classical lecture-rooms, where the professors had often to begin by teaching their students, who were frequently boys fresh from parish schools, the first elements of Greek and Latin. The merit of being open to the poor as well as to the rich was thus accompanied by a grave defect; and various proposals for changing the system had been made from time to time. At Edinburgh the question of University reform was complicated by a chronic quarrel between the *Senatus Academicus* and the members of the town council, who had the patronage of a majority of the chairs; and since the Reform Act party politics had combined with religious differences to fan the flame, most of the town councillors being Radical dissenters, and most of the *Senatus Academicus* Conservative Churchmen.

The disruption of the Church and Lord Advocate Moncreiff's Act abolishing the test paved the way for reforms. An "Association for the Improvement and Extension of Scottish Universities" was formed; and in April, 1857, its views were laid before the Lord Advocate, who promised to bring in a bill.<sup>1</sup> In the House of Commons, on the 16th of February, 1858, Mr. Moncreiff said, in answer to a question from Lord Elcho, that he had drafted his bill, and would bring it in as soon as possible.<sup>2</sup> Three days later he promised a measure dealing with land transfer; but within a few hours his career as Lord Advocate was cut short by the defeat of the Government on Mr. Milner Gibson's amendment to the Conspiracy to Murder Bill.

The bill which the Government brought in after Orsini's attempt on the life of the French Emperor made conspiracy to murder a felony instead of a misdemeanour, as it had hitherto been. The first reading, supported by Mr. Disraeli and most of the Conservatives, was carried by a majority of two hundred. But the French abuse of England—the bombs had been made in Birmingham—produced a state

<sup>1</sup> Sir Alexander Grant's *Story of the University of Edinburgh*, ii. 90.

<sup>2</sup> *Hansard*, cxlviii. 1472.

of feeling in this country resembling that which preceded the rupture of the Peace of Amiens; and the fact that no answer had been returned to a despatch from Count Walewski was made the pretext for a combination against the Government.<sup>1</sup> The Conservative party, almost to a man united with the Radicals and the Peelites in support of Mr. Milner Gibson's amendment, which expressed regret that the Ministers, "previously to inviting the House to amend the law of conspiracy, at the present time has not felt it to be their duty to make some reply to the important despatch received from the French Government."

During the debate on this amendment Mr. Moncreiff made a speech in which he said that conspiracy to murder was a capital offence in Ireland, but only a misdemeanour in England, and that in Scotland, where there was no distinction between misdemeanour and felony, it was doubtful how a conspiracy followed by no overt act could be punished. The law ought, therefore, to be made uniform throughout the United Kingdom, as the bill proposed; and, moreover, the amendment should be rejected for the simple reason that it had nothing to do with the merits of the bill, the principle of which the House had already accepted. And why should not aliens conspiring on British soil to commit murder in another country be made subject to the law, as British subjects are?

"The Lord Advocate made a good speech," Lord Palmerston wrote in his letter to the Queen that night. But Mr. Gladstone, who followed Mr. Moncreiff in the debate, began by saying, "I shall advisedly pass by the principal part of the speech of my learned friend the Lord Advocate, relative to the merits of the bill"; and he did so on the ground that this country should not amend its laws "under menace and terror of a foreign Power." This appeal to

<sup>1</sup> Virulent attacks on England were published in the *Moniteur* (like those of 1803-1804) and French officers insulted this country in addresses to the Emperor. The despatch of the French Foreign Minister, who spoke of England giving hospitality to assassins, was deeply resented, and Lord Palmerston's desire to remain on good terms with France was called truckling to a foreign Power.



national pride was made with startling vehemence. With his accustomed fervour Mr. Gladstone swept aside the arguments of the Lord Advocate and anticipated those of the Attorney-General, whose speech, Lord Palmerston said, "would have convinced men who had not taken a previous determination."<sup>1</sup> Eighty-four Liberals joined the Peelites and the bulk of the Conservative party. The plot against the Ministers succeeded. Many of their supporters, believing there was no danger, had left town; and the amendment was carried by a majority of nineteen.

Lord Palmerston resigned; and before the end of February (1858) Lord Derby's administration was formed.

<sup>1</sup> The Government had brought in the bill on the advice of the Attorney-General (Sir Richard Bethell, afterwards Lord Westbury), who had given an opinion that aliens conspiring in England to commit an offence beyond the seas were not subject to English law. Lord Campbell and the other law lords disagreed with this opinion: *Life of Lord Campbell*, ii. 357, and his speech in the House of Lords, March 1, 1858. The speeches of the Lord Advocate and the Attorney-General are in *Hansard*, cxlviii. 1802, 1820. Mr. Moncreiff said that it would have been the easiest thing in the world to write a "smart despatch" to the French Government; but the country ought to act with prudence and moderation in the interests of peace. Mr. Milner Gibson and Mr. Bright, however, were eager to snatch a victory over Lord Palmerston, and gloated over what Mr. Bright afterwards called "the condemnation of the hoary sinner."

## CHAPTER V

JOHN INGLIS

MR. JOHN INGLIS, the Dean of Faculty who had defended Madeleine Smith, was appointed Lord Advocate when the Palmerston administration resigned. He was the youngest son of Dr. John Inglis, minister of Old Greyfriars Church at Edinburgh, and Maria Moxham Passmore, daughter of Abraham Passmore, Esq., of Rolle Farm in Devonshire. Born in George Square, Edinburgh, on the 21st of August, 1810, he was sent, when nine years old, to the High School, where he "appears to have been an ordinary well-doing boy, not conspicuous either in the class or on the field."<sup>1</sup> On leaving school he went to the University of Glasgow (1825), and thence, having gained one of the Snell Exhibitions, to Balliol College, Oxford, where he matriculated on the 27th of November, 1828.<sup>2</sup> An uneventful, and apparently idle, University career ended in 1833, with a third-class and the degree of B.A.<sup>3</sup>

To gain a Snell implied work ; but hitherto, either because he was careless at Oxford, or because he was developing slowly, he had done nothing to show his powers. But it seems clear that, on returning to Scotland, he applied himself in earnest to the study of law ; for, having passed to the bar in July, 1835, the moment his opportunity came,

<sup>1</sup> *John Inglis*, by James Crabb Watt, Advocate, 1893. Mr. Crabb Watt's exhaustive volume is the best authority for the career of Inglis at the bar and on the bench.

<sup>2</sup> The other Snell Exhibitioners of that year were Henry John Provand, and the Hon. W. Walter Raleigh Kerr. The value of the exhibition was about £180 a year ; £100 from the Snell Trust, and £80 from another source.

<sup>3</sup> He took his M.A. in 1837.

after a short time of waiting, he proved himself equal to the burden of a heavy practice. The ecclesiastical litigation of that time was a goldfield, though not a very rich one, for the bar. Dr. Inglis, who died in 1834, had been a well-known leader of the "Moderates"; and his son was often retained as counsel on that side, with Duncan McNeill or Patrick Robertson as his leader, against Rutherford and Mr. James Moncreiff.

Early associations had made Mr. Inglis take something more than a professional interest in the questions of Church law which he had to argue before the Court of Session or the General Assembly; and on one occasion he was himself very nearly a litigant. The Moderate party had presented to Government a memorial, which said that the principles of the Non-intrusion party were now propounded for the first time in the history of the Scottish Church; and a copy of this document was sent to the General Assembly of the Presbyterian Church in Ireland. Dr. Cunningham, one of the Non-intrusion leaders in Scotland, made a speech to the Irish Assembly in which he said that the memorial was "written by a young advocate in Edinburgh, who has published some other articles on the same subject, especially in *Blackwood's Magazine*—articles characterized by the same gross ignorance and *reckless mendacity* which characterize this memorial."<sup>1</sup> The "young advocate" was John Inglis, who threatened proceedings for libel, and claimed damages of £1,000. It is seldom excusable, and generally rash, to make charges of mendacity against opponents who are merely discussing public questions; and Dr. Cunningham, though one of the ablest controversialists of his day, had to climb down. He published a retraction and apology, withdrew his statement, and expressed his regret that, "on the impulse of the moment," he had used words which implied that the author of the memorial had been guilty of falsehood. There the matter ended; but, say the biographers of Cunningham,

<sup>1</sup> These articles, "On the Present Position of the Church of Scotland," were in *Blackwood* for November and December, 1839.

“ A staring caricature, representing him on his knees before Mr. Inglis, ruefully imploring mercy, kept its place in the shop-windows for some weeks.”

This publicity was probably most unwelcome to Mr. Inglis, whose habits were so reserved that he seldom mingled in the social life of the Parliament House. But it was impossible, even for a man to whom the study and practice of the law were the chief business and pleasure of life, to avoid identifying himself with some political party ; and Mr. Inglis, who had been born in a Tory household, was a loyal though silent member of the party which still followed Sir Robert Peel. He was appointed an advocate depute in 1844 ; but this was not so much a symbol of party recognition, as of Lord Advocate McNeill's desire to secure the assistance of a very efficient representative in the criminal courts. This office he held till Sir Robert Peel's administration fell in the summer of 1846. He was now so fully employed that he gave up junior practice ; and when the Conservatives returned to power in February, 1852, he became Solicitor-General for Scotland.

The Lord Advocate, Mr. Adam Anderson,<sup>1</sup> who was waiting for the first vacant judgeship, made no effort to find a seat in the House of Commons. It was, however, announced that the Solicitor-General would stand for Orkney and Shetland at the general election, which was known to be approaching.

Except once, in 1835, this constituency had always been Liberal since the Reform Act. Mr. Frederick Dundas, who had been already twice elected as a Whig without opposition, was defeated at the general election of 1847 by an independent Liberal candidate, Mr. Arthur Anderson. But now (1852) Mr. Anderson, finding that the county Liberals did not support him cordially, retired, and issued a letter advising his friends to vote for Mr. Inglis. This seemed to make it possible, provided a sufficient number of Liberals deserted their party, that the Conservatives might keep out Mr. Dundas, although, in spite of

<sup>1</sup> *Supra*, p. 161.



his coming late into the field, he was a much stronger candidate than the late member.<sup>1</sup> Parliament was not dissolved till July.<sup>2</sup> But the contest for Orkney and Shetland began at the end of March; and on the 19th of May, when the Solicitor-General was canvassing the electors and making speeches, he succeeded Mr. Adam Anderson as Lord Advocate.<sup>3</sup>

About a year before there had been a banquet of "The Friends of Protection in Scotland," at which no fewer than seven hundred ladies of the Conservative party had been present.<sup>4</sup> Lord Eglinton had proposed the toast of "The Protectionist Cause and Lord Stanley, its leader." Mr. Christopher had made a speech regretting that Mr. Disraeli was not present to support the cause.<sup>5</sup> Mr. Newdegate, then a young man, had predicted a victory for protection in the near future. Sir Archibald Alison had supplied statistics, and Professor Aytoun poetry. It was an enthusiastic gathering. The Lord Stanley of that night was now Earl of Derby, and head of the Government in which Mr. Inglis was Lord Advocate. Yet Mr. Inglis in his election address declared against protection. The evils which pressed on agriculture could, he said, be removed or lessened without re-imposing a tax on the people's food.

In all quarters the constituencies were puzzled by the tactics of the Ministerial candidates, and found it impossible to discover what the policy of the Government would be on the question between protection and

<sup>1</sup> Mr. Frederick Dundas of Papdale, Orkney, was the eldest son of the Hon. C. L. Dundas, brother of the first Earl of Zetland. He was Member for Orkney and Shetland from 1837 till 1872, except during the Parliament elected in 1847, and was five times returned without a contest.

<sup>2</sup> *Supra*, p. 163.

<sup>3</sup> *London Gazette*, May 21, 1852.

<sup>4</sup> In the Music Hall at Edinburgh, April 21, 1851.

<sup>5</sup> Mr. Robert Adam Dundas (grandson of the second President Dundas), who had defeated Jeffrey at the Edinburgh election of 1831, and was the last Tory Member for the city, assumed the name of Christopher in compliance with the will of Mr. George Manners of Bloxham Hall, and afterwards took that of Nisbet Hamilton when his wife, Lady Mary Bruce, succeeded to the Belhaven and Dirleton estates in 1855. He was Member for North Lincolnshire from 1837 to 1857. Died June 9, 1877.

free trade, though this was the very question in which the average elector took most interest. Every one seemed to be contradicting every one else. Lord Derby's name was coupled with protection in one part of the country, and with free trade in another. His son, Lord Stanley, Under-Secretary at the Foreign Office, spoke at King's Lynn as if the food of the people would never again be taxed, while at Colchester Lord John Manners hinted that the palmy days of protection might be expected to return. It was bewildering to read of Mr. Disraeli, Chancellor of the Exchequer, asking the electors of Buckinghamshire how any one could be so foolish as to imagine that the Government would put a tax on corn, and of Mr. Christopher, Chancellor of the Duchy of Lancaster, telling the electors of North Lincolnshire that it was an insult to Lord Derby to imagine that he would not put a tax on corn.

"Once for all," said the Lord Advocate on the nomination day, "let it be understood that I will never, under any circumstances, or in any combination with any class of statesmen, consent to impose a tax on the food of the people." But in those northern islands the electors have their wits about them; and a voice from the crowd immediately asked the awkward question: "What says Christopher?" If one member of the Government, on the shores of Kirkwall Bay, was a free trader, and another member of the Government, on the shores of the Wash, was a protectionist, what was the country to believe? And, though the first Scottish law officer of the Crown was pledging himself not to support food taxes, all his hearers knew that Sir Fitzroy Kelly, who had voted as a law officer under Sir Robert Peel for the abolition of food taxes, had just been returned for East Suffolk as a strong protectionist. What, therefore, might not happen, people asked, if after all it turned out that Mr. Christopher knew what he was talking about? If, said one paper, the Lord Advocate's free trade protestations are sincere, he ought never to have taken office in a protectionist Government.

It is easy to see that Mr. Inglis found this plunge into

politics uncongenial. The stormy atmosphere of the hustings was disturbing after the calm of the law courts. It was difficult for this studious and reserved man, accustomed to be treated with respectful deference while he argued points of law deliberately and at his ease, or walked the floor of the Parliament House with solicitors attending him hat in hand, to face the ordeal of addressing crowds, who thought Mr. Dundas just as important a man as he was, and likely to be more useful as their member, who did not hesitate to interrupt him, and met his cautiously balanced words by bluntly shouting, "Are you a Whig or a Tory?"

His speeches were so moderate as to be almost neutral; but, as a stranger, he did not understand the constituency, and fell into the error of alluding to his formidable opponent and some of the local magnates in a way which was sure to give offence. It was a mistake to recall the election of 1847, when Mr. Dundas was defeated, and call him "your disgraced and rejected member"; and it was also a mistake to call one of the most popular landowners in Orkney, who happened to be an advocate, though he never practised, a "stickit lawyer." This did him harm; but in all probability it did not materially affect the result. The constituency was Liberal; and with a strong local candidate against him no Conservative was likely to win. The majority for Mr. Dundas was thirty-three.

After the declaration of the poll (August 3, 1852) the Lord Advocate said he was "not a little mortified and disappointed at the result," and complained that eighteen electors had broken a promise to vote for him. This was received with cries of "proof" and "names." Then he went on to say that the election had not been decided on principle, but by the influence of a "miserable minority in the county," that the majority had been carried away by "mere popular delusion," and were "not in a condition to choose a representative at all." At this there was a storm of hisses, and a voice cried out "He's in a passion." He told them to think independently. "So we do!" shouted the Orcadians. The return of Mr. Dundas was,

in point of fact, a most popular victory. The Lord Advocate's supporters regretted this scene, while the other side said that he had been "playing a game of deception and playing it coarsely," by taking office under Lord Derby, and at the same time protesting that he was a resolute opponent of a duty on corn.<sup>1</sup>

Parliament was to meet at the beginning of winter. The Conservative party was far stronger than any one of the other parties in the House of Commons. If, however, the Whigs, Radicals, Irish Liberals, and Peelites combined Ministers would be outvoted. This made the prospects of the Government precarious; and Mr. Inglis had no wish to sacrifice his practice at the bar, and spend half the year in London as a private member. Nevertheless, the divided state of the Opposition gave the Government a chance of life. The Lord Advocate, therefore, looked about for a seat; and in winter there was a vacancy at Lisburn. This borough appeared safe—on the frontiers of Antrim and County Down, a part of Ireland where the Liberals seldom ventured to contest a seat. The surrounding district had, as usual, returned Conservatives at the general election. Both members for Belfast were supporters of the Government<sup>2</sup>; and from Lisburn Conservatives had always been returned ever since the Reform Act. This part of Ulster seemed, therefore, the ideal spot where a sound Protestant Conservative might obtain a seat without difficulty.

But opposition came from an unexpected quarter. A Mr. Roger Smyth came out as a Conservative Protestant "National," to fight Mr. Inglis, on behalf of an independent party, as being a stranger and a nominee of landlords. The Lord Advocate soon found that any trouble he met in Orkney and Shetland was a trifle to what he had to face in Ulster. The walls of Lisburn were plastered with a caricature of him as a "Fighting Cock from Scotland,

<sup>1</sup> "Even with honesty, it is true," the *Scotsman* said, "he might have lost his election, but he would not also have lowered his good repute and self-respect."

<sup>2</sup> One of them was Sir Hugh Cairns, who sat for Belfast till he went on the bench.



crowing and flapping his wings." On the nomination day, though troops were drawn up in the streets, the mob could not be kept in order. The Lord Advocate was refused a hearing. His hotel was bombarded, and the windows broken. All night before the polling Lisburn was in an uproar. The houses of Mr. Inglis' committee men were attacked; and the voting took place in the midst of drinking, fighting, and stone-throwing. The electorate was very small, and on a poll of one hundred and seventy-seven Mr. Smyth had a majority of twelve (December 10). "The town," a local paper says, "was in great confusion, but from the array of military, horse and foot, no serious riot was apprehended." It may be imagined what would have happened, if Mr. Inglis had spoken at Lisburn as he spoke at Kirkwall; but he left Ireland as soon as he heard the result, and did not wait for the formal declaration of the poll. The result of this election was a complete surprise; but, said the *Belfast News*, "Neither Romanist nor Radical, neither Whig nor Democrat, neither Manchester Leaguer nor Tenant Leaguer, can raise a cry of triumph over the defeat of the Lord Advocate in Lisburn, so far as regards any practical loss sustained by the Government."

This was his second defeat; but Mr. Inglis had small reason to regret it, for within a week he was no longer Lord Advocate, the famous debate on Mr. Disraeli's budget having ended with the division (December 17, 1852) which sealed the fate of the Derby administration, and brought in Lord Aberdeen at the head of the coalition.<sup>1</sup>

In the Parliament House Mr. Inglis had already obtained ample consolation for these political reverses. In November the office of Dean of Faculty was vacant. He was only in his forty-third year; but his professional standing was such that he was chosen to receive the highest honour which the bar of Scotland can bestow. He was Dean for the next six years, and performed his duties in admirable fashion.

On the death of Lord Anderson in September, 1853, Mr. Moncreiff, then Lord Advocate, offered to recommend him

<sup>1</sup> *Supra*, pp. 168, 169.

for the vacant judgeship ; but he very wisely chose to remain at the bar, where he was now almost as consummate a leader as Rutherford had been in his day. In the infinite variety of his practice he had of course acquired the quickness of apprehension which becomes a second nature with all great counsel, and to that essential quality he added as much minute and patient toil as if he had been a struggling junior. His speech for Madeleine Smith shows that he could take up the rôle of an impassioned advocate ; but those who remembered him pleading in civil cases always said that his style of speaking was habitually grave, weighty, almost judicial, with seldom a gleam of the dash and sparkle which sometimes light up the courts. It was in the civil courts that his strength was chiefly displayed ; and there, during the six years from 1852 till the fall of the Palmerston administration, the Dean of Faculty was head of the bar in fact as well as in name.

At the general election of 1857 he did not try to enter Parliament ; but when the Conservatives took office in February, 1858, and he was again made Lord Advocate, a seat was found for him at Stamford, the Marquess of Exeter's borough in Lincolnshire. The sitting members were Sir Frederick Thesiger and Lord Robert Cecil ; but the elevation of Thesiger to the peerage, on his appointment as Lord Chancellor, left a vacancy, and the new Lord Advocate of Scotland, coming as the nominee of Burghley House, was as a matter of course returned without opposition, and entered Parliament as the colleague of Lord Robert Cecil.<sup>1</sup>

He took his seat on the 12th of March ; and presently, after some experiences of answering questions, and speaking on the Scottish bills which were then before Parliament, he was on his legs discussing the functions of the Lord Advocate as public prosecutor.

The failure of the Western Bank at Glasgow, in

<sup>1</sup> On March 3, 1858. It was for Stamford that, first as Lord Robert Cecil and afterwards as Viscount Cranborne, the late Marquess of Salisbury sat in the House of Commons from 1853 to 1868.

November of the previous year, had ruined many shareholders and depositors ; and on the 24th of March (1858) an Irish Member, Mr. John Brady,<sup>1</sup> asked the Lord Advocate whether he intended to prosecute the directors. Mr. Inglis replied that he had neither evidence to justify a prosecution, nor information tending to show that such evidence could be found.<sup>2</sup> The general public and the victims of the failure were, however, dissatisfied with this answer ; and on the 16th of April there was a long debate.<sup>3</sup> Mr. Brady described how the directors had squandered the money of the shareholders, paid dividends out of capital, and represented the bank to be flourishing when it was insolvent. He also said that it had been rumoured that the Lord Advocate was the legal adviser of the directors, and that, if this was so, he ought not to have refused to take proceedings.

Mr. Inglis easily disposed of the personal insinuation against himself by explaining that many different persons who were involved in the disaster had sought his legal advice, and that he had endeavoured to do his duty fairly by them all. He then gave his views as to the duty of the Lord Advocate. The public prosecutor, he said, is not a Minister of Police, and it is no part of his duty to hunt out crime. "On the contrary, I have always understood that the true theory of the Lord Advocate's functions is that he should prosecute only on the complaint of an injured party." He qualified this statement by admitting that there might be exceptional cases ; but he maintained that the general rule which he had laid down was peculiarly applicable to commercial frauds, because : "in the first place, it is almost impossible that the public officer should be able to possess himself of the materials even for making a preliminary inquiry without the aid of injured parties ; and, in the second case, it may fairly be presumed that if the supposed injured parties remain silent, there can be no very good grounds for undertaking a public prosecution." None of

<sup>1</sup> M.P. for Leitrim, 1852-187.<sup>4</sup>

<sup>2</sup> *Hansard*, cxlix. 812.

<sup>3</sup> *Hansard* cxlix, 1194,

those who had suffered from the failure of the Western Bank had made a formal complaint to the law officers. A committee of shareholders was holding an investigation; and, said the Lord Advocate, "it is to be supposed that these gentlemen understand their own position much better than their representatives in this House, and are able, if they choose, to probe the matter to the bottom, and ascertain whether, in point of fact, there is any foundation for a criminal prosecution."

This statement is obviously open to the objection that when the action of a body of men has notoriously caused great public suffering, it is the duty of the public prosecutor to find out, *ex proprio motu*, whether that action has been of a criminal character. Nothing, however, came of this discussion; but the line taken by the Lord Advocate, of which Mr. Moncreiff approved, was a disappointment to the general public, who had hoped to see the authors of so great a disaster brought to justice.

Meanwhile it had been announced in both Houses that the Government intended to legislate for the Scottish Universities, and that the Lord Advocate was preparing a bill.

Mr. Moncreiff had handed over to his successor the materials he had himself collected before leaving office, and the draft of his measure <sup>1</sup>; but the bill which Lord Advocate Inglis introduced, on the 22nd of April, 1858, was more elaborate than anything which Mr. Moncreiff had contemplated. The standard of qualification for the degree of Master of Arts was to be raised; and University Councils were to be created, as members of which the graduates would take part in the administration of University affairs. Hitherto, except at Edinburgh, where a great deal of power was in the hands of the town council, the governing bodies had been the Principals and professors. It was now proposed to establish in each University a "board," (consisting of the rector, the Principal, and assessors nominated partly by the professors and partly by the graduates), which was to regulate the

<sup>1</sup> *Supra*, p. 200.



course of study and control the revenues.<sup>1</sup> The salaries of professors were to be raised ; a staff of tutors was to be provided to assist them ; new chairs were to be founded ; there were to be pensions for professors who were unable to remain in office ; and the expense of these new arrangements was to be met by a grant of public money. King's College and Marischal College at Aberdeen were to be united as one University.<sup>2</sup> These extensive changes were to be carried into effect by an executive Commission.

The Lord Advocate's speech introducing his bill was so imperfectly heard that the debate on the first reading was of little value ; but he was understood to hint that the town councillors of Edinburgh were not qualified to administer the affairs of an University. The town council at once saw that though the nomination of professors might be left in their hands, it was certain that if the bill passed, and the executive commission set to work, the corporation would lose that supreme control over the University which it had hitherto enjoyed. Accordingly Mr. Adam Black, who had been Member for the city since Macaulay's retirement, opposed the second reading of the bill, which he described as "thoroughly bad," requiring a new stock, a new lock, and a new barrel. "However anomalous," he said, "it may appear in theory, it has been found in practice not only that a corporation of tradesmen are competent to manage a University, but that, in fact, the University of Edinburgh, of which the town council of Edinburgh are patrons, has been the best managed of all the Scottish Universities."<sup>3</sup> Opposition came also from the Member for Aberdeen<sup>4</sup> ; but the measure was, on the whole, well received.

<sup>1</sup> Now the "University Court." In Edinburgh the Lord Provost was a member, and he and the town council together named one of the assessors.

<sup>2</sup> The "University and King's College of Aberdeen" was founded, in the reign of James IV, by William Elphinston, Bishop of Aberdeen, under authority of a Bull issued by Pope Alexander VI towards the close of the fifteenth century. Nearly a hundred years later "Marischal College and University of Aberdeen" was founded and endowed by George Keith, fifth Earl Marischal.

<sup>3</sup> *Hansard*, cv. 1884.

<sup>4</sup> Colonel W. H. Sykes, 1857-1872.

Mr. Black withdrew his amendment, and there was no division on the second reading.

Before the committee stage was reached the old question of Scottish administration was once more raised in the House of Commons on the 15th of June, by Mr. W. E. Baxter, who had been elected for the Montrose district in March, 1855, soon after the death of Mr. Joseph Hume.

Mr. Baxter's proposal was that an Under-Secretary of State should be appointed to perform the political functions attached to the office of Lord Advocate. "Scotsmen have," he said, "good reason to be proud of the distinguished men who have filled the position of Lord Advocate, and of the ability they have shown in adapting the law of Scotland to the present state of society." But they had far too much to do. He praised Mr. Moncreiff's work, but complained that the trial of Madeleine Smith had kept him in the High Court at Edinburgh when he ought to have been in the House of Commons attending to important Scottish business. He said it was impossible for Lord Advocate Inglis, "the most distinguished ornament of the Scottish bar," to perform all the duties of his office, and quoted from a speech made by a former Lord Advocate, who said that since the union the administrative duties of the Lord Chancellor of Scotland, the Lord Privy Seal, and other public officers, had all been thrown upon the Lord Advocates.<sup>1</sup> If, Mr. Baxter said, people knew how much the Lord Advocates were expected to do, they would be surprised that they had done so much.

Mr. Inglis, who came in during Mr. Baxter's speech, said he supposed the intention was to relieve the Lord Advocate; but, before giving his approval to the proposed change, he must be satisfied that the office of Lord Advocate was too

<sup>1</sup> This was Lord Advocate Charles Hope, when defending himself in the House of Commons (June, 1804) against a vote of censure for having acted in a manner "oppressive, illegal, and contrary to his professional duties." When Hope returned to Scotland after this affair an English paper said: "Arrived at Edinburgh the Lord High Chancellor of Scotland, the Lord Justice General, the Lord Privy Seal, the Privy Council, and the Lord Advocate, all in one post-chaise, containing only a single person." —*Lord Advocates of Scotland*, etc. (1883), ii. 208, *et seq.*

laborious, that the appointment of an Under-Secretary would really help him, and that the duties of which he was to be relieved would be as well performed by an Under-Secretary as they had been under the existing system. The Lord Advocate, he explained, acted as public prosecutor, assisted by the Solicitor-General, the advocate deputes, and an extensive staff throughout the country. He was the legal adviser of the Government, and was also responsible to the Home Office for the preservation of public peace in Scotland, for which the Home Secretary was in turn responsible to Parliament. These were his chief functions, and an Under-Secretary could not fulfil them. As to legislation—would an Under-Secretary obtain more time for Scottish business than the Lord Advocates had obtained? Would an Under-Secretary find enough occupation to fill up his days, and would his office not be so nearly a sinecure that it would soon attract the observation and censure of Parliament?

Mr. Stirling of Keir suggested that Mr. Baxter might alter his motion to one in favour of the appointment of an Under-Secretary "in the Home Office, to perform a portion of the duties attached to the office of Lord Advocate."<sup>1</sup> Mr. Baxter agreed to this; but Mr. Disraeli for the Government, and Lord Palmerston for the front Opposition bench, were against any such appointment. "I must," said Mr. Disraeli, "say that my experience leads me to this conviction, that of all public offices none have been sustained during the last twenty years with such continuous ability as the office of Lord Advocate of Scotland." Mr. Baxter went to a division on his resolution (as amended by Mr. Stirling); but he was defeated by a large majority.<sup>2</sup>

Shortly before the Lord Advocate came in to speak in this debate, he had received a piece of news which made it doubtful whether he would remain much longer in office.

That afternoon the law lords were hearing an appeal from

<sup>1</sup> Mr. Baxter's motion was "that, in the opinion of this House, an Under-Secretary for Scotland should be appointed to perform the political duties at present attached to the office of Lord Advocate."—*Commons' Journals*, June 15, 1858.

<sup>2</sup> Ayes 47, Noes 174; *Hansard*, cv. 2150.



Scotland, in which Mr. Inglis was senior counsel for the respondents. He was speaking, defending the judgment of the Court of Session, where the leading opinion had been that of Lord Justice Clerk Hope, when Sir Richard Bethell, who led for the appellants, showed him a paper in which the death of Hope was announced.<sup>1</sup> He had declined, five years before, Mr. Moncreiff's offer of an ordinary judgeship ; but if he took Hope's place he would be head of one of the divisions of the Court of Session. His party, though sitting on the Speaker's right hand, were in a minority. At any moment there might be a change of Government ; and, if he allowed this opportunity to pass, he might be disappointed as Rutherford had been disappointed before him. His best chance of securing a high judicial position was to grasp it at once. All this must have flashed through his mind when he finished his argument, and left the bar. His first concern, however, was to steer his University bill through the House of Commons.

When the Commons were in committee (June 25-July 6) the Lord Advocate's proposal to leave the patronage of the University of Edinburgh to the town council was met by an amendment giving it wholly to the new board, or University Court ; but, in the end, this matter was compromised by the insertion of a clause providing that the patronage should be administered by seven "curators," four appointed by the town council, and three by the University Court. Another amendment throwing open the office of Principal in the Scottish Universities, hitherto a monopoly for clergymen of the Established Church, to nonconformists, whether laymen or clerics, was opposed by the Lord Advocate ; but he was defeated by a considerable majority.<sup>2</sup> An amendment proposed by Mr. Gladstone, which enabled the four Scottish Universities to surrender their separate standing,

<sup>1</sup> Lord Justice Clerk Hope had died suddenly at Edinburgh the day before, Monday, June 14, 1858.

<sup>2</sup> *Hansard*, cli. 955. The result was, Sir Alexander Grant says, that "in the very next year, 1859, Sir David Brewster, a layman and a member of the Free Church, was appointed principal of the University of Edinburgh."—*Grant*, ii. 96.



and become colleges in a central University, was accepted by the Government. This scheme met with some approval in Scotland ; but it would have destroyed the individuality of these ancient seats of learning, and has, fortunately, never been carried into effect.

When the bill went to the House of Lords it was understood that, so far as the Government was concerned, no amendments would be proposed. But Lord Belhaven moved that the clause which permitted laymen and non-conformists to hold the office of Principal should be left out ; and the Duke of Buccleuch, who was in charge of the bill, accepted this amendment. The clause was therefore deleted. Another alteration was then made. As the bill left the Commons, the students alone had the right of voting at the election of a rector for the University of Edinburgh ; but the Lords inserted a provision that the professors should also vote. The Commons disagreed with both these amendments ; and then the Lords, on the ground that a controversy with the other House so late in the session might entail the loss of the measure, did not insist upon them.<sup>1</sup> The bill was passed, and became the statute which is a lasting memorial of its author's short career in Parliament.<sup>2</sup>

While it was still in the House of Lords a new writ had been issued for the election of a Member for Stamford, "in room of John Inglis, Esquire, who since his election for the said borough hath accepted the office of Her Majesty's Lord Justice Clerk in Scotland."<sup>3</sup>

After some hesitation Lord Advocate Inglis had made up his mind to abandon all idea of making a great figure in the House of Commons. "Admirable as are the gifts of the Lord Advocate," said a friendly critic of his speech on the second reading of the University bill, "there is one defect about his style which will be a heavy drawback upon his efficiency in speaking upon other Scotch or legal subjects. His manner has that distinct forensic stamp upon it which few

<sup>1</sup> *Lords' Journals*, July 29, 1858.

<sup>2</sup> 21 & 22 Vict. c. 83 (August 2, 1858).

<sup>3</sup> *Commons' Journals*, July 12, 1858.

lawyers ever get rid of, and to which the House of Commons has almost as great an objection as to coalitions." He was, in fact, above all things a lawyer; and in his four months experience of the House of Commons he had probably found that he was not suited for political life. In Scotland, and particularly in the Parliament House, he was at home. The future of his party was very doubtful; and a high station on the bench, for which he must have known he was admirably fitted, was his for the taking. He took council with his friends; and their opinion was that he should retire from Parliament. Accordingly he resigned his seat for Stamford, where he was succeeded by Sir Stafford Northcote, and on the 13th of July, the day on which his University bill passed its second reading in the House of Lords, presented to the President and judges of the Court of Session his commission as Lord Justice Clerk, and began thirty-three years of illustrious service on the bench.<sup>1</sup>

As Lord Justice Clerk, and still more as President, to which office he was raised in February, 1867, after McNeill had gone to the House of Lords, he proved himself emphatically the right man in the right place. In addition to a minute acquaintance with the general principles of law, an unusual facility in applying them to facts which came before him, and that extensive knowledge of previous decisions which he had necessarily acquired while practising at the bar, he brought a serene atmosphere into the tribunals over which he presided. To his colleagues and to counsel he was the essence of courtesy. Methodical in managing the business of the court, calm, dignified, and of really profound learning, the longer he lived "The President"—no one ever called him anything else—was the more highly esteemed throughout the length and breadth of Scotland.

During his first four years on the bench he was chairman of the executive Commission appointed to carry out the details of the University Act. "During that time," says Sir Alexander Grant, "they held one hundred and twenty-

<sup>1</sup> He took the title of Lord Glencorse, from an estate which he had lately acquired in Midlothian.

six meetings, at every one of which, without missing a single occasion, the Lord Justice Clerk presided. He was, in fact, the soul of the Commission, and the excellent ordinances which resulted from their labours may be regarded as especially the product of his judgment, and of his untiring attention to the mass of details with which the Commission had to deal.”<sup>1</sup> As the author of the University Act he naturally took great pains to make the work of the Commissioners successful. From most public questions, however, he stood aloof, though he took an active part in some matters of local interest, such as the restoration of St. Giles’ Cathedral, and the management of Fettes College.

He received from time to time, before and after he became a judge, such honours as fall to men in his position. He was a privy councillor, D.C.L. of Oxford, LL.D. of Edinburgh, rector of two Scottish Universities, Aberdeen and Glasgow; and so forth. In the year 1868, a distinction which he prized very highly came his way. The first Chancellor of the University of Edinburgh was Lord Brougham, who was elected in 1859, after a purely political fight with the Duke of Buccleuch. Brougham died in 1868. The general election of that year was at hand; and when it became known that there was to be a contest between Lord President Inglis and Mr. Gladstone, it seemed as if the result would depend on the strength of political parties in the University council. Three years before the Duke of Montrose, Chancellor of Glasgow University, had given his casting vote in favour of the President, then Lord Justice Clerk, against Mr. Gladstone in a contest for the rectorship.<sup>2</sup> It

<sup>1</sup> The other Commissioners were the Duke of Argyll, Lord Aberdeen, Lord Stanhope, Lord Mansfield, Lord President McNeill, Lord Advocate Moncreiff, Sir W. Gibson Craig, Sir William Stirling Maxwell, Mr. Hastie, M.P. for Glasgow, Mr. Murray Dunlop and Lord Ardmillan. They produced what Sir Alexander Grant calls a system under which the Universities of Scotland “sprang into new life and development.” The general ordinances are in *Parl. Papers*, 1860 (416, 437), liii. 637, 643, and 1861 (16, 335), xlviii. 735, 757. Others, relating to the four Universities separately, are among the *Papers* for 1859–61.

<sup>2</sup> On the total poll of votes Mr. Gladstone had a majority. But the students at Glasgow are divided into four “nations,” the majority in

was highly desirable, he had said, that the rector should live in Scotland, so that the University might consult him easily, and the Lord Justice Clerk, from his intimate knowledge of the Scottish system, was peculiarly fitted for the office. For the same reason he was in November, 1868, elected Chancellor by a majority of the University council at Edinburgh. "The results of his work, tested by some six years' experience," says Principal Grant, "had inspired profound confidence in his wisdom as an academical administrator."

The inaugural address which Lord President Inglis read on his installation as Chancellor (April 2, 1869) was a thoughtful and scholarly paper, in which he gave the University reformers of Scotland the wise advice never to abandon the fundamental principles of their native system. "Let us," he said, "build on the old foundations whose stability has been well tried, and if we extend our lines, and add to the ancient structure, let us at least not depart from the original style, lest in the end we find ourselves, as the result of our labours, in possession of nothing better than a tasteless and incongruous pile without unity or cohesion." But he never had any liking for composing addresses, still less for writing in periodicals; and the two articles on the Church question which he wrote in early life are, with the exception of another in *Blackwood* on Montrose and the National Covenant of 1638, the only compositions of that description which have been traced to him. An address on the historical study of law, which he gave before the Juridical Society of Edinburgh, is full of interest; but, apart from his labours on the University Commission, the President, from the time he went on the bench, devoted himself almost exclusively to his duties as a judge.

Mr. Inglis had married, when at the bar, Miss Isabella Mary Wood, daughter of Lord Wood, one of the judges, and had three sons. But the long illness of his wife, of which she died in the year 1855, cast a shadow on his private

each nation constituting one vote; and as two nations were for Inglis, and two for Gladstone, the casting vote of the Chancellor became necessary.



life, and probably increased his natural reserve and rather solitary habits. He often had the bearing of a man who had long ago lost all taste for society or amusement of any kind. He played golf, however, with considerable zest, and seemed to enjoy himself on the links, where he would sometimes unbend, and be quaintly humorous, with younger men.<sup>1</sup>

The central figure in the legal world of Scotland, he kept his place to the end with mental powers undiminished. But old age cannot be defied ; and his strength gradually failed until at last, after a short illness, he died on the 20th of August, 1891. About a hundred years before the public funeral of Lord President Inglis was the public funeral of the second President Dundas. The bar of Scotland had once decided not to attend the funeral of a judge, lest by establishing such a precedent they might be brought "under the necessity of paying extraordinary outward compliments, in future times, where equal merit may not call for the same inward respect." But President Dundas was held by the men of his day to be the greatest judge who had ever presided in the Court of Session ; and such was the veneration with which he was regarded that the bar, with the Dean of Faculty at their head, his baton covered with crape, joined the long procession. The like honour was paid to Lord President Inglis, who was carried to his grave on the Calton Hill at Edinburgh attended by the bar, the representatives of public bodies, and a great company of his fellow-citizens.

All the world knows that the portraits of eminent men drawn by their contemporaries are usually out of perspective. The historical landscape must be far off before we can see the figures who move upon it in their true proportions. But there can be little doubt that

<sup>1</sup> One day I was playing against him in a foursome, when my partner made a fatal stroke at the last hole. On our way into the Club the President, in a slow, impressive voice ordered him for execution. "As soon," he said, "as your partner has paid me the statutory half-crown, you have my full authority to remove his head."

the name of John Inglis will hold, even in the distant future, one of the highest places on the roll of Scottish judges.

Mr. Inglis had been wise to pluck the fruit when it was ripe in the summer of 1858 ; for in June of next year, eleven months after he left the House of Commons, Lord Derby's administration fell. In these eleven months there were two Lord Advocates, Mr. Charles Baillie and Mr. David Mure. Both came of good old Scottish families, the Baillies of Jerviswoode and the Mures of Caldwell, who appear in our history during several centuries, fighting with the old English enemy, negotiating treaties of peace, holding offices at Court, making good marriages, and playing many other parts.

In the seventeenth century they were Whigs and Covenanters. The laird of Caldwell, with some other gentlemen of Renfrewshire, took the field against the persecutors ; but this stroke for civil and religious freedom failed, and he fled to Holland, where he died in exile. His wife, who remained in Scotland, was cruelly treated ; but at the Revolution the family property, which had been given to General Thomas Dalziel, was restored.<sup>2</sup>

It was Sir John Nisbet of Dirleton, Lord Advocate to Charles the Second, who oppressed the Mures. His successor, Sir George Mackenzie, the great persecutor of the Whigs, oppressed the Baillies. The execution of Robert Baillie, in 1684, was followed by the ruin of his family. The eldest son took refuge in Holland, whence he returned with the Prince of Orange and recovered his estates. In the reign of George the First, Rachel, daughter and heiress of George Baillie, married Lord Binning, eldest son of the sixth Earl of Haddington ; and, after many years, the result of this marriage was that when the direct line of the Haddington family became extinct, on the death of the ninth Earl in 1858, the title and estates devolved upon his cousin,

<sup>1</sup> *Account of ye Sufferings of ye Lady Caldwell, 1683 ; Caldwell Papers, i. 140.* The gift of the forfeited lands of Caldwell to Dalziel of Binns is printed in Wodrow, Bk. II, ch. ii.

the eldest son of George Baillie of Jerviswoode and Mellerstain. The second son, born at Mellerstain on the 3rd of November, 1804, was the Charles Baillie who became Lord Advocate in July, 1858.

He had gone to the bar in 1830. Next year there also passed Mr. David Mure, born in 1810, the youngest son of Colonel William Mure of Caldwell and his wife Anne, daughter of Sir James Hunter Blair of Dunskey in Wigtonshire. The families of Jerviswoode and Caldwell had by this time given up their Whig politics ; and both were advocate deputes during the Peel and Derby administrations.<sup>1</sup> In the year 1853 at the time of the coalition, they were made sheriffs on the recommendation of Lord Advocate Moncreiff, Mr. Baillie receiving Stirlingshire, and Mr. Mure Perthshire. In 1858 Mr. Baillie became Solicitor-General for Scotland ; and in July of that year he succeeded Mr. Inglis as Lord Advocate.

Lord Advocate Baillie found a secure seat as Member for Linlithgowshire, in those days always steadily Conservative, where he was elected in February, 1859. But he had been only one month in Parliament when the death of old Lord Murray (March 7, 1859) made a vacancy in the Court of Session ; and, immediately resigning his place as Lord Advocate, he went on the bench with the title of Lord Jerviswoode. He was a man of singularly retiring character. His sisters, the Marchioness of Breadalbane and Lady Polwarth, were noted for their beauty ; and his own delicate and almost feminine features were those of one who was not suited for the strenuous work of public life. He left the bench in 1874, and spent the next few years quietly at Dryburgh House in Roxburghshire, where he died on the 23rd of July, 1879, survived for a few months by his wife, a grand-daughter of the fifth Lord Polwarth,

<sup>1</sup> Mr. Mure's advocate deputation was enlivened by a passage of arms with the fiery Lord Justice Clerk Hope, who browbeat him into withdrawing a case in the circuit court at Glasgow (May, 1844). The matter came up in the House of Commons (July 2, 1844) where Lord Advocate McNeill's Highland diplomacy found a means of explaining matters ; and a motion for an inquiry into Hope's conduct was defeated.

to whom he had been married for nearly fifty years.

Mr. Mure, who had been Solicitor-General since July, 1858, succeeded Lord Advocate Baillie, and was returned for Buteshire at the general election of 1859. But ten days after the new Parliament met an amendment to the address was carried, and the Ministers resigned. Mr. Mure remained in the House of Commons as a private Member till 1864, when Mr. Moncreiff, then Lord Advocate, offered him a judgeship. During his four years in Parliament he had been an excellent and very useful Member. But the tide was running strongly against the Conservative party at that time ; his hold on Buteshire was precarious ; and after thirty-three years at the bar he was ready to take his place amongst the judges. Having sat in the Court of Session till October, 1889, when he retired, he died on the 11th of April, 1891. His wife, Helen, daughter of James Tod, Esq., of Kirkhill in Midlothian, had died in 1849 ; and he survived Lord Jerviswoode, whose career was so closely linked with his own, for fifteen years. He had been in Parliament as Lord Advocate for only one month, and Lord Jerviswoode for almost exactly the same time ; and probably few of those who saw them on the bench in later years ever remembered that they had once held that office.



## CHAPTER VI

JAMES MONCREIFF—*Continued*

IN the autumn of 1858 Sir William Jolliffe predicted that Lord Derby would remain in office till the Opposition were united. The Liberals, though they had a majority in the House of Commons, were distracted by the rivalry of Lord Palmerston and Lord John Russell; and when Parliament met in February (1859) it seemed as if the Conservatives might hold their own for some time longer. But the beginning of the end came when Mr. Disraeli's reform bill was thrown out in March. The Ministers resolved to try their fortunes in the country, and Parliament was dissolved.

At the general election, Mr. Moncreiff, who withdrew from the Leith district in consequence of the Liberal dissensions in that constituency, was returned for Edinburgh with Mr. Adam Black as his colleague, Mr. Cowan having retired. They were not opposed; but Mr. Moncreiff's position as Member for Edinburgh was uncomfortable from the first, because of the deadly feud between a section of the city Radicals, led by Mr. Duncan McLaren, and the Parliament House men, of whom Mr. Moncreiff, now Dean of Faculty, was the natural champion.

This feud, which was often compared to the ancient feud between Town and Gown at Oxford, was intensified by a lawsuit which had come before the Court of Session soon after the by-election caused by the elevation of Macaulay to the peerage. Mr. McLaren had been chagrined at his own defeat in 1852; and at the time of Mr. Adam Black's election as successor to Macaulay, he had taken

a line which led the *Scotsman* newspaper to attack him in a series of articles. He had, it was said, cast old principles to the wind. He had traduced old friends. There was venom in every word he spoke, and a dagger in every sentence. He was an instance of how a clever and useful man might ruin himself by mere sourness of soul. He was a snake, a viper, a serpent. If his spirit infected his audiences, "Edinburgh public meetings would become mere contests of uproar and ruffianism."

In consequence of these articles Mr. McLaren raised an action for libel against the *Scotsman* on the ground that they injured his feelings, and held him up to public contempt and ridicule. The damages were laid at £1,000. At the trial, which was heard before Lord Justice Clerk Hope and a jury at the end of July, 1856, Mr. Inglis and Mr. Moncreiff were the leaders. Mr. Moncreiff's speech for the *Scotsman*, one of the cleverest as well as one of the longest he ever made in a civil court, carried the war into the enemy's camp. Mr. Inglis had said that his client only wished to vindicate his character. Mr. Moncreiff, with a view to mitigating the damages which the jury were sure to give, denied this. Mr. McLaren, he said, was thin-skinned and malignant. His own bitter speeches should have kept him out of court; and he had raised the action purely out of spleen at the result of the election. There would have been no action if the result had been different. The jury gave Mr. McLaren £400 of damages; from that moment he was more unpopular than ever in the Parliament House; in the city the discord between the Whigs and Radicals increased; and Mr. McLaren's party thenceforth worked night and day on his behalf, and against Mr. Moncreiff. They were not ready for action in 1859; but they quietly bided their time.

At the general election of 1859, the Government made gains in England and Ireland. But in Scotland and Wales there was no change; and the Liberals had still a majority in the House of Commons. At this juncture Mr. Sidney Herbert wrote some words of wisdom to Lord Granville. "I am satisfied," he said, "that if any step is taken to turn out

the Government two things are necessary, viz: first that the two rivals<sup>1</sup> should agree to serve together as the Queen may direct. Secondly, to take the whole Liberal party into council, discuss the risks to be run, and the objects to be attained. It is well to know how far the two sections are willing to sink differences and support a Government if formed." The time, he added, was past when the Liberals would vote like a flock of sheep for whatever a few men might concoct in a library. This advice was taken. Lord Palmerston and Lord John agreed to abide by the Queen's decision as to which of them should lead. A meeting, held at Willis's Rooms on the 6th of June, drew up an amendment which all sections of the party promised to support; and within a week this amendment, moved by Lord Hartington, was carried. The Ministers then gave up the seals; and Lord Palmerston became again Prime Minister, with Lord John as Foreign Secretary, after Lord Granville, to whom the Queen in her dilemma first applied, had found it impossible to form an administration.

The new Government was in reality another coalition; but Lord Palmerston had confidence in the stability of the fusion of Whigs, Peelites, and Radicals of which he was now the chief. "Although," he said, "the Government is composed of elements that had no general combination before they were put together, the cement of a common sense of public duty will bind the mass together."<sup>2</sup> One appointment, that of Mr. Gladstone as Chancellor of the Exchequer, caused surprise. He had voted against Lord Hartington's amendment; and, says Lord Morley, "the plain man was puzzled by a vote in favour of keeping a Tory Government in power, followed by a junction with the men

<sup>1</sup> Lord Palmerston and Lord John Russell.

<sup>2</sup> *Panmure Papers*, ii. 479. Lord Palmerston did not offer any office to Lord Panmure, on the ground that the wide range from which he had to draw the members of his Cabinet prevented him bringing in all his old colleagues. Lord Panmure professed satisfaction at being left out, "for I should have been sorely divided between my desire to serve with you, and my indisposition to be in a Cabinet composed as this must be." Mr. Sidney Herbert was Secretary for War, the office held by Lord Panmure in the last Palmerston Government.

who had thrown that Government out." But he seems to have had no doubt that it was his duty to join the only combination by which, at that time, the government of the country could be carried on. So he passed another milestone on the road to liberalism ; and, though Lord Morley thinks otherwise, and gives very good reasons for his opinion, surely the events of the next six or seven years prove that when Mr. Gladstone joined Lord Palmerston's last administration he took the most fateful step in the long pilgrimage which ended with Midlothian.

Mr. Moncreiff, once more Lord Advocate, was re-elected for Edinburgh (June 28, 1859), and resumed the burden of Scottish administration. Amongst his constituents the perennial cry for the abolition of the annuity tax was louder than ever. In recent years there had been several attempts at a settlement. Lord Advocate Inglis, though not in Parliament, had framed a bill in 1852. Macaulay had spoken for the last time in the House of Commons on behalf of another bill prepared for Lord Aberdeen's Government by Mr. Moncreiff ; but though Mr. Duncan McLaren himself had a hand in the drafting of this measure, some of the extreme Voluntaries joined the Conservatives in opposing it. "The bitterness," says Macaulay, "of the Voluntaries surprised me. I have no particular love for Establishments or for priests ; but I was irritated and even disgusted by the bitterness with which the bill was assailed." This bitterness was increased by the strong measures taken by the clergy to collect the tax in 1857, when some of the resisters were sent to prison in handcuffs. In that year and in 1858 Mr. Moncreiff and Mr. Adam Black brought in bills for the abolition of the tax, but failed to carry them, though the state of things was now a public scandal.<sup>1</sup>

In the session of 1860, however, Mr. Moncreiff carried a bill which abolished the annuity tax. The stipends of the ministers, the amount of which formerly depended chiefly

<sup>1</sup> Mr. Black's bill, though opposed by Lord Advocate Inglis, was rejected on the second reading by a majority of only one ; *Hansard*, cv. 2157-2189.



on the amount raised by the levying of the tax, were fixed at a maximum of £600 a year. The exemption of the lawyers came to an end. The necessary funds were to be collected along with the police rates. Ecclesiastical commissioners were appointed; and the magistrates and town council of the city were to execute and deliver to these commissioners a perpetual bond of annuity for £4,200 for the support of the clergy. The whole property of the city was pledged as security for the payment of this sum. This arrangement was the result of negotiations between the corporation of Edinburgh, the members of the College of Justice, the city clergy, and the Government. The clergy, though not quite satisfied, accepted the bill as, on the whole, a reasonable compromise. In the House of Commons most of the Scottish Members supported it in the hope that they were now hearing the last of this dreary local question; and in the end, when the measure passed, it was generally understood that all parties had acquiesced in it as an equitable settlement, and that in a few years the "Edinburgh Annuity Tax" would be forgotten.<sup>1</sup>

There was no doubt about the popularity of another bill which Mr. Moncreiff carried in the following year. He had been grappling manfully with national education; but no progress seemed possible, so obstinately did the violent Churchmen and the violent dissenters block the way. Mr. Moncreiff, however, now carried an instalment of educational reform.

The law which required all parochial teachers to be members of the Church of Scotland had not been enforced for a long time except in country parishes. In towns they were seldom asked to sign the test. But a case had lately been decided in the Court of Session the effect of which was to shut the doors of all parish schools against teachers who did not adhere to the Established Church. This grievance was removed by Mr. Moncreiff's Act of 1861. In future schoolmasters might be nonconformists, and

<sup>1</sup> 23 & 24 Vict. c. 50; *Speech of the Lord Advocate on Introducing a Bill to abolish the Annuity Tax*, January 30, 1860.

had merely to sign a declaration that they would not teach anything opposed to the Westminster Confession of Faith and the "Shorter Catechism," or exercise their functions to the prejudice of the Church. These and some other salutary reforms in the educational system of Scotland, the Lord Advocate, with the help of Mr. Mure, his predecessor, carried through the House of Commons; and, though sharply criticized by some of the peers, who wished to maintain the test, the bill passed in the last days of the session.<sup>1</sup>

Those whose recollections go back to the sixties must well remember Lord Advocate Moncreiff's activity. He usually went up to London in the middle of February, and remained there till the end of July, except for a short time at Easter. But though he spent the greater part of every session in London, he was constantly travelling between England and Scotland. After a busy day in the Parliament House, often contending against that redoubtable antagonist Mr. George Young, then Solicitor-General for Scotland, he would rush home to 15, Great Stuart Street, where he sometimes had to work till it was time to drive off to the Waverley Station in order to catch the night express for London. Reaching King's Cross in the grey dawn, he had a long morning at the Lord Advocate's office in Spring Gardens.<sup>2</sup> Later in the day there might be a meeting with some troublesome deputation from Scotland, or an appeal case till it was time for the House of Commons. If he was not in his place on the front bench there was Brooks's, or the Reform, or Grillion's, and the usual dinners and receptions of a London season.

Only a man of very robust constitution and buoyant spirit could have stood the strain under which Mr. Rutherford broke down; and Mr. Moncreiff had nearly twenty years of it. From his long tenure of office as Lord Advocate his practice at the bar, and along with that his private interests, suffered. A family to maintain, a house in Edinburgh, a house in London, a house in the country in

<sup>1</sup> 24 & 25 Vict. c. 107.

<sup>2</sup> 1, New Street, Spring Gardens.

Scotland, election expenses, and a vast amount of miscellaneous expenditure which could not be avoided, injured the fortunes of a man who had never time, nor indeed much aptitude, for method or care in managing his private business. In autumn he certainly had the recreations of shooting, fishing, and golfing at St. Andrews or North Berwick. But even then there was no escape from official work. He went through it all cheerfully, with a gay humour which seemed unfailing. I recollect him starting one morning, from a country house in Fifeshire, where he was living in summer, for a day of toil in Edinburgh. The mist, which had been lying thick, began to roll away, and North Berwick Law could be seen across the mouth of the Forth. "It will be fine, the head of the Law is clearing," some one said. "The Head of the Law's always clear," was the quick reply; and he drove away, laughing like a schoolboy, to return in the evening apparently as fresh as when he left. This bright and happy disposition—he was full of the *joie de vivre*—no doubt made the burden of official duty lighter. Head of the bar, Minister for Scotland, in fact, though not in name, and a popular member of the House of Commons, he thoroughly enjoyed his life; and when, in the session of 1864, the subject of Scottish administration was once more debated, he stoutly resisted all proposals for altering the old system. "I do not believe," said Sir James Fergusson, who raised the question, "that there ever was a Lord Advocate who sacrificed so much of his time, and I daresay so much of his interests, to the discharge of his duties; but what I say is that the evils of which I complain are part of and inseparable from the system"<sup>1</sup>

The Lord Advocate defended the existing system in a long speech, the last sentences of which depict the spirit in which he viewed his office. "My honourable and gallant friend," he said, "says that this office is the great prize

<sup>1</sup> Sir James Fergusson, then M.P. for Ayrshire, had moved for a Select Committee "to inquire how far the number of members of this administration charged with the conduct of the affairs of Scotland, and having seats in Parliament, is commensurate with the requirements of that part of the Kingdom."—*Hansard*, clxxv. 1167.



to which the bar of Scotland look forward. In one sense it can scarcely be so described, for unquestionably, in point of emoluments or prospects, it does not hold out any very golden or glittering temptation. A counsel in large practice is not a gainer by accepting the position I have now the honour to hold ; and there is no prospect opening beyond it. There is no promotion, no peerage to look forward to. There are none of those prizes which are within the reach of the law officers of England and Ireland. Yet the office has one recommendation, and it is a great one to a generous mind. It has the recommendation that it affords the means of doing much good to the country. It holds out that most honourable object of ambition—the opportunity of using power for its only true and legitimate end, the advantage of the nation. It offers the purest and highest reward of patriotism—the consciousness that one is placed in a position where by diligence and assiduity one may be of use in one's day and generation."

There were few present—the House had been nearly counted out twice while Sir James Fergusson was speaking—but the Lord Advocate's speech, delivered in his most finished manner, was received with a loud murmur of applause ; and at the request of Mr. Mure and some other Members the motion was withdrawn.

It is almost certain that if Mr. Moncreiff had been independent of his profession he would have devoted himself entirely to political life ; and in that case he would probably have held office in Lord Palmerston's last Cabinet, or in that of Lord John Russell. His Parliamentary reputation stood high ; and in July, 1865, when the vote of censure on Lord Westbury was moved, the Government amendment was put into his hands. His appeal to the Commons to act as an impartial tribunal was a powerful piece of pleading ; but no pleading could prevail in face of the prejudice against the Lord Chancellor.<sup>1</sup>

<sup>1</sup> *Hansard*, clxxx. 1045–1138. "I was in the House of Commons last night," Lord Granville writes, "and never saw anything less judicial. The Tory benches were crammed with M.P.'s from all parts of the Kingdom,



Three days after this debate the Parliament, which had now entered on its seventh year, was dissolved.<sup>1</sup>

Mr. Moncreiff had fully believed that his Annuity Tax Act finally settled that question. "When I look back," he had said, "on my Parliamentary life, there is one thing I shall ever remember with gratitude, and that is that I have been instrumental in passing the Act which terminates the annuity tax for ever."<sup>2</sup> The compromise of 1860 had, indeed, been ostensibly accepted by all parties. But ere long an agitation began for the repeal of the Act. Payment of the police rate was refused. The law was put in force. The goods of resisters were sold at the town cross; and some of them went to prison. A good deal was heard about tender consciences and religious scruples. But it was well known that the cause of the movement was the determination of the leaders to capture both seats for Edinburgh from the Whigs; and in the spring of 1865 it was announced that two Radical candidates, Mr. Duncan McLaren and Mr. John Miller, would contest the city at the general election.

The *Scotsman* had said that a time might come when public meetings in Edinburgh were mere contests of uproar and ruffianism.<sup>3</sup> This came to pass. On the 7th of June, a month before the dissolution, Mr. Moncreiff and Mr. Black held a meeting. The Music Hall was crowded; and directly in front of the platform sat a compact body of electors, some of them personal friends of Mr. McLaren, who were evidently there for the purpose of trying to break up the meeting. There was not the slightest pretence of fair play. It had been arranged beforehand that, if possible, the two Members for the city should be silenced. For three-quarters of an hour Mr. Black tried to obtain a hearing, but the

and even from abroad. They met the Cabinet statements with howls and laughter." In 1888 Mr. Moncreiff wrote an estimate of the Lord Chancellor, with whom he was on terms of personal friendship, which is printed in *The Life of Lord Westbury*, ii. 269.

<sup>1</sup> On July 6, 1865.

<sup>2</sup> *The Last Ten Years of the Annuity Tax: Substance of the Lord Advocate's Speech in the Music Hall*, December 24, 1860.

<sup>3</sup> *Supra*, p. 227.

uproar was such that not a word he said could be heard. An attempt was made to shout down the Lord Advocate in the same way ; but most of the audience wished to hear him. There were calls for silence from all parts of the hall ; the ringleaders in front of the platform became more orderly ; and, though frequently interrupted, his powerful voice rose above the din, and he was able to finish his speech.

On the nomination day (July 10), there was another most unpleasant and even more disgraceful scene. Those who sat with Mr. McLaren and Mr. Miller on the hustings were men of most respectable position, but they broke in upon the speeches of the other side with hooting and ill-bred personalities. The vulgar rudeness of one well-known citizen caused great surprise. Three days later came the election ; and the result was that, though the Conservative and Free Church votes were given to the sitting Members, Mr. McLaren was returned at the head of the poll by a majority of 206 above the Lord Advocate. Mr. Miller came last ; but he was only 74 votes below Mr. Black.

Over the rest of Scotland the counties returned fewer Conservatives than at any general election since 1832, and all the towns elected Liberals. Taking the United Kingdom as a whole, the elections were a crowning triumph for Lord Palmerston. "The majority was his own, and his popularity was greater than ever, both with the newly elected Members, and in the country at large."<sup>1</sup> But he was not to meet another Parliament. The ranks had been thinning rapidly. Within the last few years Lord Campbell, Sir James Graham, Sidney Herbert,<sup>2</sup> Sir George Lewis, the Duke of Newcastle, and others who have been mentioned in these pages, had all died ; and in the autumn after his last great victory Lord Palmerston himself, who had nearly reached his eighty-second year, joined the permanent majority (October 18, 1865).

The Russell administration was then formed, with Mr.

<sup>1</sup> Lord Edmund Fitzmaurice, *Life of Gramerville*, i. 485. In Wales there was a Liberal majority for the first time since 1832.

<sup>2</sup> Created Lord Herbert of Lea in 1860.

Gladstone as leader in the House of Commons ; and in the beginning of February (1866) the new Parliament met.<sup>1</sup>

If by some miracle Prince Talleyrand had lived to hear that Lord Palmerston was dead, he would not have repeated his comment on the death at St. Helena. Aged though he was, the death of Lord Palmerston was an event. The rising generation of to-day, to whom he must be little more than a name, cannot of course realize how large a space he filled in the national life of fifty years ago ; but any one who is old enough to look back so far will recall the curious feeling as of a personal loss with which he heard that Lord Palmerston was gone. " We must now be prepared," Lord Shaftesbury wrote, " for vast and irrevocable changes. Palmerston was the great pillar appointed, under God's Providence, to which all the vessels of the State were linked, and so the fleet was held to its moorings. It is now cast down ; the ships are set afloat without rudder or compass, and will drift in every direction over the broad sea." And, surely enough, the country was immediately plunged into that long period of vast changes, brought about by both parties, which began with household suffrage and has not ended yet.

Since the collapse of Chartism both parties had nibbled at the franchise question ; but little or nothing had been heard of it during Lord Palmerston's last administration. Now, however, with Earl Russell and Mr. Gladstone at the head of affairs, " Parliamentary Reform " came to the front ; and in March (1866) the bill for England was brought

<sup>1</sup> Lord John had been raised to the peerage as Earl Russell in 1861. Lord Clarendon succeeded him at the Foreign Office in 1865. During the session of 1866 there was a debate (March 2) on a motion for an address to the Queen asking her to use her influence with foreign Powers in favour of making private property free from capture at sea in time of war. Mr. Moncreiff, who had already (in 1862, *Hansard*, clxv. 1603) opposed a similar motion, said, speaking for the Government, " We can never rob war of its terrors, nor enable persons to pursue their peaceful avocations in the midst of war. If war is not terrible, it will not effect its purpose " (*Hansard*, clxxxi. 1443). This speech involved him in a controversy which will be found in *Correspondence between the Sheffield Foreign Affairs Committee and the Lord Advocate, on the part of France and Russia in the surrender by England of the Right of Search*, 1866.



in by Mr. Gladstone. It was read a second time at the end of April ; and on the 7th of May, in the midst of noise caused by Members leaving after a somewhat heated debate on the Redistribution of Seats bill, which Mr. Gladstone had introduced that afternoon, the Lord Advocate laid the reform bill for Scotland on the table.

The small majority of five by which the second reading of the English bill had been carried was a foretaste of what was coming ; and on the 18th of June the Waterloo of that campaign was fought, when the allied host of Conservatives and Adullamites carried, by a majority of eleven, the amendment which led to the resignation of the Government.

In Scotland, from about the year 1848 till after the death of Lord Palmerston, there had been no very widespread cry for an extension of the franchise. One reason for this was the improved condition of the people, caused by the general prosperity of the country and the rise in the value of wages since the repeal of the corn laws and the other legislation of that period. Another reason was the unswerving support given by the electors in most Scottish constituencies to the Liberal party. The "non-electors" had seen, time after time, a majority of Liberals returned to Parliament, and had therefore no reason to complain that they were not represented. But this indifference came to an end in the summer of 1866. Mr. Lowe's speeches against the enfranchisement of the working men, and Mr. Bright's speeches in favour of it, had roused deep feelings of resentment and enthusiasm, which, after the defeat of the Liberal Government, found outlet in a popular agitation which was all the more impressive because, wholly unaccompanied by that violence which had so often alienated public sympathy from working-class movements, it was conducted by means of orderly processions and public meetings.

At Edinburgh a large assemblage of working men demanded a bill giving manhood suffrage ; and Mr. Moncreiff called a meeting to explain his own views (December 10, 1866). "There have always," he said, "been two parties in the Liberal ranks. There are the old Whigs, to whom



I profess to belong. I have learned my Liberalism in the school of the old Whigs—I have learned it in the school of the old Edinburgh Whigs, and I believe that the lessons I have there learned are sound.” There was an advanced school, he went on, of which Mr. Joseph Hume and Mr. Henry Warburton were leaders in a former generation, and of which Mr. Bright and Mr. John Stuart Mill were now the leaders. The Whigs, he said, attached more importance to “the unseen, unfelt, traditionary power which mingles our political with our social constitution, than to the line and plummet of hard logic.” The constitution was not, indeed, perfect ; but it was better than any other. He, therefore, advised union, and warned them against injuring the cause of reform by attempting to obtain manhood suffrage.

No one then imagined that the Conservative Ministers were about to make their great surrender, and produce a franchise bill more democratic than any which Lord Russell or Mr. Gladstone would have ventured to propose.

Meanwhile a new Lord Advocate had been appointed,—Mr. George Patton, third son of James Patton of Glenalmond, Sheriff Clerk of Perthshire.<sup>1</sup> He was born in 1803, and after education at Perth, Trinity College, Cambridge, where he graduated B.A. in 1826, and the University of Edinburgh, passed to the Scottish bar in 1828. Having climbed into a fair practice, he joined the ranks of the seniors on the Conservative side, and at last succeeded Mr. Mure as Solicitor-General in May, 1859. After the fall of the Derby administration, a few weeks later, he plodded on in the Parliament House till the year 1866, when he was advised to find a seat in the House of Commons.

In July, 1865, the borough of Bridgwater in Somersetshire had returned a Conservative, Mr. Henry Westropp, and a Liberal, Mr. Kinglake, the historian of the Crimean

<sup>1</sup> Mr. Patton of Glenalmond had three sons, all of whom were bred to the law—James Murray, who succeeded him as Sheriff Clerk ; Thomas, a Writer to the Signet ; and George, the Lord Advocate.

war. Mr. Westropp was unseated on petition ; and a deputation from Bridgwater went to London, where they had an interview in the lobby of the House of Commons with Mr. Patton, to whom they were introduced by Mr. Spofforth, a member of the legal firm of Baxter, Rose, & Norton. Mr. Spofforth was evidently afraid that if Mr. Patton, whom he afterwards described as "an oldish, thin man, and not in good health," went as a stranger to such a notoriously corrupt place as Bridgwater he might fall into dangerous hands. So he took him aside, and gave a word of timely warning. "If," he said, "you go down to Bridgwater, you must take some friend to protect you from importunity, and take care that you do not get into any scrape." Then he left the matter to be settled with the deputation.<sup>1</sup> Mr. Patton agreed to stand, and put all the arrangements for the election in the hands of two of his friends, Mr. Frederick Pitman of Edinburgh, and Mr. George Thompson, a member of the Scottish bar. It may be assumed that neither of them knew at that time what a Bridgwater election really meant.

The election took place on the 7th of June (1866), the Liberal candidate being Mr. Walter Bagehot, editor of the *Economist*. At 12 o'clock on that day Mr. Bagehot was at the head of the poll, and Mr. Patton's chance seemed hopeless ; but a Mr. Tromp, a solicitor from London acting as a Conservative agent, heard that thirty electors were "bottled up" in an inn, and sent a message to one of Mr. Patton's Committee that if he had £300 he could poll thirty men. The money was sent ; the men voted ; and the election was won by a majority of seven. This was direct bribery ; but there had also been bribery on the Liberal side, and no petition could be presented against Mr. Patton's return.

In July, when he was appointed Lord Advocate, he went down again to Bridgwater for re-election, believing that there would be no contest. He found, however, that he was to be opposed by Mr. Philip Vanderbyl, who had stood

<sup>1</sup> *Report of Commission on Corrupt Practices at Bridgwater ; Parl. Papers, 1870, xxx., Minutes of Evidence, October 1, 1869.*

for Great Yarmouth at the last general election. On this occasion the weight of money was on the Liberal side, and the electors put Mr. Vanderbyl at the head of the poll by thirty-six votes on the 12th of July.

Mr. Patton was Lord Advocate, without a seat in Parliament, for seven months after his defeat at Bridgewater; but in February, 1867, when Lord President McNeill went to the House of Lords, he resigned, and became Lord Justice Clerk in the place of Mr. Inglis, who then succeeded McNeill.

The new Lord Advocate was Mr. Edward Strathearn Gordon, who had been Solicitor-General for Scotland since the change of Government in July, 1866. He was not in Parliament; and Mr. W. E. Baxter, who had made the absence of Mr. Patton from the House of Commons the occasion for several questions as to the management of Scottish business, once more pressed for the appointment of a Secretary of State. The subject was discussed on the old lines. Mr. Duncan McLaren supported Mr. Baxter; and Colonel Sykes, who called the absence of the Lord Advocate an "intolerable nuisance," complained of the inconvenience to Scottish Members of "having to trot to the Lord Advocate's office in Spring Gardens if they have any question to ask." Nothing came of this debate; and before the end of the year Mr. Gordon found a seat on the borders of Norfolk and Suffolk, where he was elected without opposition by the small constituency of Thetford on the 2nd of December, 1867.<sup>1</sup>

The last Parliament elected under the Reform Act of 1832 rose on the 31st of July, 1868. The redistribution of seats which accompanied the franchise statutes of 1867 and 1868 gave seven additional Members to Scotland. Two of these were allotted to the Universities, Edinburgh and St. Andrews forming one constituency, and Glasgow

<sup>1</sup> Mr. Gordon was Lord Advocate till after the general election of 1868, and again from 1874 to 1876. See Chapter viii.

and Aberdeen another.<sup>1</sup> Mr. Moncreiff was chosen as the Liberal candidate for the latter.

His position as one of the Members for Edinburgh had become intolerable. Mr. McLaren had brought in an annuity tax bill, which Mr. Moncreiff had opposed; and it had been thrown out.<sup>2</sup> The feud between the Whigs and the Radicals was as violent as ever. Mr. Moncreiff felt himself bound in honour to stand by the compromise which he had carried through with the assent of the Church, and which the Voluntaries, though they now repudiated it, had been understood to accept. All this opened up a prospect of constant friction between the two Members for Edinburgh, if Mr. McLaren failed to bring in another Radical at the general election. Mr. Moncreiff was anxious not to divide the Liberal party in the city; but the animosity against the Whigs, which Mr. Bright had fostered in the early forties, which had helped to defeat Macaulay, and which had grown in virulence of late years, made it certain that he had no alternative but to retire, unless he wished to make Edinburgh the scene of uproar and ruffianism at every election. Accordingly, on the 24th of June (1868), he told his committee that he would not stand again, and explained his reasons. "It has been humiliating to me," he said, "that in this, the great metropolis of Scotland, the cradle of Scottish art and science, the very cradle also of Liberal opinion, where our celebrated forefathers maintained, amid great discouragement, the flag of free opinion, until they saw it at last planted triumphantly—it was humiliating to me that we should split, and exhibit ourselves before the nation as raising great controversy, engaged in turmoil, keen though ignoble, about matters so purely local and, in my opinion, so almost infinitesimal as those on which this great schism has been founded."<sup>3</sup>

<sup>1</sup> The counties of Aberdeen, Ayr, and Lanark were divided into two divisions returning one Member each. Peeblesshire and Selkirkshire were united to return one Member. A new constituency, the "Border Burghs" (Hawick, Galashiels, and Selkirk) was created, returning one Member; and Glasgow and Dundee received an additional Member each.

<sup>2</sup> February 20, 1867. *Hansard*, clxxxv. 655-678.

<sup>3</sup> The day after the meeting at which Mr. Moncreiff intimated his re-



Mr. Moncreiff was, in any case, sure of a seat. Ten years before he had been offered an unopposed return for the counties of Clackmannan and Kinross ; and there were other popular constituencies where he would have been welcome now. He chose, however, to stand for the Universities of Glasgow and Aberdeen, where the Conservative candidate was Lord Advocate Gordon, Thetford having been one of the boroughs disfranchised at the redistribution of seats in England. Parliament was dissolved on the 11th of November ; and the polling for the Universities was to begin in the first week of December.

During this election Mr. Moncreiff was proposed for the rectorship of Edinburgh University. Mr. Gladstone, the first rector chosen after the University Act of 1858, had been twice elected, in 1859 and 1862—the office is held for three years—and in 1865 Mr. Carlyle succeeded him. Mr. Gladstone's inaugural and valedictory addresses had of course attracted some attention ; and no one who was present can forget the pathetic scene on that dim afternoon when Thomas Carlyle, a bent and tragic figure of old age, with a voice so feeble that few could hear him, spoke to his young countrymen on what to him was “ the gloomiest chaotic day, nearly intolerable for confusion, crowding, noisy inanity and misery.”<sup>1</sup> But the members of the University Court had always hoped that the students would give them a rector who was not a mere figurehead ; and in the summer of 1868 Professor Christison talked the matter over with a group of young men, who, as it chanced, had

tirement the *Scotsman* had an article which shows the state of feeling in the city at that time : “ In the House of Commons there is already great amazement and discomfort in regard to our latest choice. Let us show them that we can do something still more extraordinary in the same line. If something is wanted more objectionable and unseemly than we have already, there is Mr. John Miller—send him. To the lowest deep a lower still succeeds, and perhaps the sooner we get to the bottom the better. Let us lie down in the dirt comfortably, and without further fuss. He that is down need fear no fall, and may even hope to rise some other day.”—*Scotsman*, June 25, 1868. Five months later Mr. McLaren and Mr. Miller were returned unopposed.

<sup>1</sup> *Reminiscences of Thomas Carlyle*, ii. 297.

already resolved to bring forward Mr. Moncreiff.<sup>1</sup> He was nominated when the University met at the beginning of winter, another section of the students proposing Mr. Ruskin.<sup>2</sup>

Though each side proclaimed that its man was "the non-political candidate," the Moncreiff party was, as a matter of fact, Whig to the backbone, while it was the University Conservative club which supported Mr. Ruskin, and told the students not to vote for "an ex-Lord Advocate, purely a political partisan, chosen by the Parliament House clique," but to elect "Ruskin, the greatest living writer of the English language." To which the other side replied that there was no such thing as a Parliament House clique in the University, and that their man alone would make a thoroughly useful rector. There were verses grave and gay, and placards by the dozen in which many a youth saw himself for the first time in print.

In the midst of all this, while the Parliamentary elections for the Universities were also in progress, as well as the contest between Mr. Gladstone and Lord President Inglis for the Chancellorship at Edinburgh,<sup>3</sup> the freedom of the city was conferred on Mr. Bright (November 3). This ceremony was followed, a few evenings later, by a great public meeting in the Corn Exchange, presided over by Mr. Grant Duff, at which the orator made a speech on the questions of the day.

<sup>1</sup> Mr. Christison, professor of *Materia Medica*, received a baronetcy in 1871, when he had been for fifty years a professor in Edinburgh. He died in 1882.

<sup>2</sup> The tendency at all the Universities had been to elect some distinguished statesman or man of letters. In 1846, when the students at Glasgow were divided between Lord John Russell and the Poet Laureate, Lord John wrote to Mr. Andrew Rutherford, who had himself just been rector, that he did not wish to be put up against Mr. Wordsworth. "Can't you," he said, "represent to the students that this would be a good opportunity for making the distinction purely literary?" This was exactly what the professors did not wish. In a letter to one of the Moncreiff party Mr. Christison said (November 2, 1868), "the rectorship of the University was intended by the framers of the University Act, and the new constitution of the University, not as an ornamental office merely, but as one with important functions, placing its occupant at the head and for the guidance of an important judicial Court." <sup>3</sup> *Supra*, p 220.

It was Mr. Duncan McLaren who began the proceedings ; and the vote of thanks to Mr. Bright was proposed by that very citizen who had made himself so prominent on the hustings of 1865.<sup>1</sup> But Mr. Moncreiff was seen on the platform ; and there were such loud cries of " Moncreiff, Moncreiff " from all parts of the building that he had to speak. When he rose he was received with cheers which lasted for some minutes, many of the audience standing up and waving their hats. Another burst of applause followed a few graceful words with which he proposed a vote of thanks to Mr. Grant Duff. It was a remarkable demonstration, the meaning of which was obvious—a spontaneous offer of admiration after what had lately happened.

When Mr. Moncreiff reached home that night, evidently much gratified by this episode, he found two of the students waiting to tell him that Mr. Robert Lowe had been proposed as a third candidate for the rectorship. This would have divided the Liberal vote—for it was impossible to exclude political feeling ; but Mr. Lowe declined to oppose an old friend and soon after the poll opened (November 14) his name was withdrawn. The contest then lay between Mr. Ruskin and Mr. Moncreiff, who was elected by 182 votes, to the great relief of Professor Christison and his colleagues, who had been trembling lest the author of the *Stones of Venice* should be brought down to guide their deliberations.

The Parliamentary election for the Universities of Glasgow and Aberdeen ran its course till the 8th of December, when Mr. Moncreiff had a majority of 243 in Glasgow, and Mr. Gordon of 196 in Aberdeen. This secured Mr. Moncreiff's return by the rather narrow margin of 47. For Edinburgh and St. Andrews the Liberal candidate, Dr. Lyon Playfair, had already (December 5) been elected. In both these elections, the first University elections ever held in Scotland, a large majority of the Established Church clergy voted

<sup>1</sup> *Supra*, p. 235.



against the Liberals, and a large majority of the non-conformists in their favour.<sup>1</sup>

The Scottish Liberals emerged from the elections under the new franchise in greater strength than ever. In Midlothian, which the Conservatives had held since 1837, Sir Alexander Gibson Maitland defeated Lord Dalkeith. Perthshire, which had been a Tory stronghold even longer than Midlothian, was wrested by Mr. Charles Stuart Parker from Sir William Stirling Maxwell. Mr. Henry Campbell, afterwards Sir Henry Campbell Bannerman, entered Parliament for the first time as Member for the Stirling district. The newly created "Border Burghs" sent to the House of Commons the nephew and biographer of Macaulay; and from the whole country fifty-two Liberals and eight Conservatives were returned.

The defeat of Mr. Gladstone in one division of Lancashire and of Lord Hartington in another, and the failure of such democratic candidates as Mr. Beales and Mr. Ernest Jones, proved that the Whigs, Liberals, and Radicals were not to carry everything before them; but Mr. Gladstone, who found a seat at Greenwich, and became Prime Minister on the resignation of Mr. Disraeli (December, 1868) was at the head of that large majority which enabled him to disestablish the Church of Ireland, and carry into law most of his other measures during the next five years.

Mr. Moncreiff, Lord Advocate once more, delivered at Edinburgh, on the 18th of January, 1869, a rectorial address which was afterwards published. One incident of that after-

<sup>1</sup> An analysis of the voting in the four Universities shows that the ministers of the various denominations voted as follows:—

	Conservative.	Liberal.
Established Church . . . . .	1,221	67
Free Church . . . . .	33	607
United Presbyterian . . . . .	1	474
Episcopalians . . . . .	78	4
Not classified . . . . .	35	360
	<hr/> 1,368	<hr/> 1,512

Of other professions, a majority of the doctors voted Liberal, and a majority of the lawyers Conservative.



noon showed his skill and readiness in handling an audience. He was standing on the spot from which he had confronted his foes in 1865 ; and on this occasion there was a sudden interruption at one part of his address. In a passage on the state of classical learning in the Scottish and English Universities he paid a compliment to Mr. Lowe.<sup>1</sup> This was the signal for a party disturbance, which developed into something very like an attempt by the Lowe and Ruskin men to stop the proceedings. But he looked the crowd of excited undergraduates in the face, and, in a voice so clear that all could catch his words, told them : “ *Catilini gladios contempsisti, non pertimescam tuos !* ” Catiline and his colleague were both sitting on the platform ; and the tumultuous applause which greeted the quotation, with the silence which followed, showed that the students understood the allusion, and with whom they sympathized.

Before this the new Parliament had met (December 10, 1868) ; and the Lord Advocate had pleased the Commons when performing what he called “ the pleasant, honourable, and to me unexpected task ” of congratulating Mr. Evelyn Denison on his re-election as Speaker for the fourth time. “ You may,” he said, “ find weight added to your words, as well as lustre to the seat you occupy, by the fact that in this Parliament you preside over an assembly which, in a wider sense than ever, is composed of the representatives of the people.”

The principal Scottish measure of the session was an education bill, in which Mr. Moncreiff had embodied the recommendations of a Royal Commission appointed five years before. He proposed that there should be a school board, elected by the ratepayers, in each parish, and a general Board of Education for Scotland (a committee of the Privy Council) with a paid chairman. The system of Privy

<sup>1</sup> “ He is one of the ablest and most finished scholars of his day, and no one exhibits, in his great Parliamentary efforts, more thoroughly the depth and variety of his classical knowledge. Unconsciously perhaps to himself, there is scarcely a sentence he speaks, hardly an epigram or a retort which falls from his lips, which does not bespeak familiarity with the great ones of antiquity.”

Council grants had not been satisfactory ; and the new Board was to select such denominational Schools as were really needed, and adopt them without calling on the rate-payers to support them. After a certain date denominational schools were to cease, and all schools were to fall under the parochial system. There was to be payment by results, as there had been under the system of Privy Council grants ; but the higher education was also to be assisted. The question of religious instruction was to be settled by the people themselves, with a conscience clause.

This was Lord Advocate Moncreiff's sixth attempt to provide a national system for Scotland. The general election having turned wholly on Irish disestablishment, it was useless to bring forward any other serious business in the House of Commons till that question was disposed of. So the Scottish education bill was taken by the Duke of Argyll, who had been chairman of the Commission, to the House of Lords, where it was read a first time on the 25th of February, 1869. The Lords passed it with some amendments ; and on the 12th of April it reached the Commons, and entered on the second stage of a rather instructive history.

The Irish bill, though it went to the House of Lords at the end of May, was in such peril that the Ministers could think of little else ; but needless obstacles were thrown in the way of this Scottish measure, for which the Cabinet seemed to grudge even a few hours. On one occasion the Prime Minister displaced it in favour of a bill dealing with the retirement of bishops ; on another occasion Mr. Ayrton, the First Commissioner of Works, pushed it aside to make way for a London rating bill ; the leader of the Opposition, who called the Scottish Members a "select vestry," of course gave no help ; and three months passed before, late one night, the Lord Advocate found an opportunity for the second reading.

When the first week of August came, and the end of the session was at hand, with the bill in committee, Mr. McLaren asked the Prime Minister whether the Government would consider "the propriety of providing some

additional means for the transaction of public business connected with Scotland." Mr. Gladstone replied in very general terms which did not commit the Ministers to anything definite; but he said that it was the intention of Government to make, during the recess, "an inquiry into the establishments now existing at Edinburgh, which are available for Scottish business, with a view to ascertain how far economy in these establishments, by their abolition, reduction, and modification, may be rendered practicable in the event of the appointment of any new Parliamentary officer for the transaction of Scottish business."<sup>1</sup>

The Scottish Members were hardly satisfied with this answer, which meant that nothing would be done, unless the expense could be met by cutting down the estimates for some of the departments in Scotland. It was now the 5th of August; and on the same day the Prime Minister sent a note to Mr. Glyn, the Liberal Whip, requesting him to ask the Lord Advocate to withdraw his education bill. But to this neither the Home Secretary,<sup>2</sup> nor Mr. Moncreiff would agree; and four days later the bill went through committee, was reported, read a third time, passed, and sent up as amended to the House of Lords.

Mr. Moncreiff believed that the amendments made in the House of Commons would be at once agreed with, and that within a few hours the bill would pass; but next afternoon (August 10) the Lords ordered it to be reprinted with the amendments, so as to show how it differed from the form in which it had been sent down to the Commons. This implied the loss of the measure for that session; and later in the evening Mr. Moncreiff, in explaining what had happened, expressed his "surprise and regret" at the course taken by the House of Lords. "All I can say is," he added, "that what has been done in another place will not discourage us from future efforts, and should enable the representatives of Scotland especially to aid, with even more

<sup>1</sup> *Hansard*, cxcviii. 1296.

<sup>2</sup> The Right Hon. Henry Austin Bruce, M.P. for Merthyr-Tydvil 1852-1865, for Renfrewshire 1869-1873, and created Lord Aberdare in 1873.



harmony and co-operation, in the accomplishment of this great object."

These were his last words in the House of Commons. Parliament rose next day, in time for those who had lingered on at Westminster to reach the Highlands of Scotland on the Twelfth. The Lord Advocate and his family were at Cultoquhey, in Perthshire, a place which he rented for some years. A few miles distant is Glenalmond, where that autumn a melancholy event occurred which suddenly changed the course of Mr. Moncreiff's life.

The great Highland road passes within a mile of Cultoquhey, winds up the slopes above the vale of Monzie, and runs at a high level across the moors till it meets the river Almond rushing from the Sma Glen, a narrow pass through which Prince Charlie marched on the retreat to Culloden. At the entrance to the Sma Glen a road branches off from the main highway, and descends eastwards through Glenalmond, where the river, dark brown and full of deep pools, flows between wooded banks, under a bridge at a hamlet called Buchanty, past Logiealmond—the Drumtochty of Ian McLaren's tales—and so onwards till it joins the Tay near Perth. Mr. James Patton of Glenalmond, father of the Lord Advocate of 1867, had died in 1831, leaving part of Glenalmond to his eldest son James, part to Thomas, his second son, and part to George. James died in 1853, and was succeeded by Thomas, on whose death, in August, 1869, George, now Lord Justice Clerk, became proprietor of the whole estate. The portion which the Lord Justice Clerk had inherited on the death of his father was a property called The Cairnies, where he laid out plantations of rare pines and other ornamental woods in which he took great pleasure; but on his brother's death he removed to Glenalmond House, which is near the river and some two miles distant from The Cairnies.

About this time it was noticed that he was nervous and uneasy, as if he had something weighing on his mind. His neighbours heard that he had been strangely agitated, when his brother died, by a paragraph in a newspaper which



announced by mistake the "death of the Lord Justice Clerk"; and this was supposed by some to explain the change in his manner and appearance which all who knew him noticed. But others suspected that the real secret of his uneasiness was the fear of awkward disclosures about the venal borough of Bridgwater. Though Mr. Vanderbyl had defeated him by gross bribery in July, 1867, the Conservatives had not ventured to petition against the return. But after the general election of 1868, when Mr. Vanderbyl and Mr. Kinglake had won the seat by the usual methods, the defeated Conservative candidates had lodged a petition; and a Commission was appointed to investigate what had been taking place at Bridgwater for many years past.

There is no doubt that Mr. Patton's own conduct was innocent. The Conservative agent testified that he had no personal knowledge of the bribery practised on his behalf; but it was possible that he would be asked whether he could explain several questionable transactions. For example when he stood for re-election, on becoming Lord Advocate, his friend Mr. George Thompson handed £2,000 in notes to Mr. Henry Westropp—himself unseated on petition after the election of 1865—who exchanged them for gold at the Bank of England, and took the money to the Carlton Club, where he made it up in a parcel, and sent it out to a Mr. Lilly, an auctioneer and J.P. of Bridgwater, who was waiting in a cab outside. This money Lilly took down to Bridgwater, where he gave it to the agent Tromp, by whom it was disbursed in bribes.<sup>1</sup> Moreover large sums, far in excess of what were made public, had been spent. Mr. Patton's published expenses were £374 for the two elections; but they had really cost £6,150, paid either by him or out of party funds. Of this sum at least £1,900 had been spent on bribery at each election; and, though he had not known what his agents were doing, it would be difficult to escape the imputation of having wilfully closed his eyes. He was far too acute not to see the painful situation in which he stood, and far too sensitive not to feel it deeply.

<sup>1</sup> *Second Report on Bridgwater*, Evidence of E. Lilly, p. 840.

The Commission began the examination of witnesses on the 23rd of August (1869), and when the middle of September came he was overwhelmed with anxiety. He thought of offering to give evidence, and consulted Lord Colonsay, who, finding him "in a nervous and excited condition," advised him not to appear before the Commission.

This interview with Lord Colonsay was on Saturday the 18th of September; and next day the Lord Justice Clerk and his wife <sup>1</sup> drove down to service at the parish church of Monzie, where his restlessness was noticed. On the following morning he rose early, went out before breakfast, and did not return. It was found that, contrary to his custom in the country, he had dressed in black, and had left behind him his watch and some articles he usually carried about with him. This caused alarm; and a search was made in the woods and along the river, which was in flood. Soon the news that he was missing spread; and for the rest of the day and throughout the night the whole neighbourhood was explored. But no trace of him was found till on the afternoon of Tuesday (Sept. 21) a discovery was made which confirmed the general fears of a catastrophe.

A pathway leads along the side of the Almond from the bridge at Buchanty towards Glenalmond House; and at a short distance from the house there is a waterfall known as the Spout of Buchanty, below which for about fifty yards the river runs through a narrow gorge, full of shelving rocks and deep pools. Close to this fall and on the brink of the stream an empty razor-case and a black necktie, both identified as his, were discovered. After this there could be little doubt of what had happened; and, after sounding the river for three days, the searchers at last found what they sought lying at the bottom of a deep pool below the Spout of Buchanty. Those who were on the banks of the Almond on the afternoon of Friday, the 24th of September, 1869, are not likely to forget what they saw. There was another mournful scene when Lord Glenalmond, a man of

<sup>1</sup> Margaret, daughter of Alexander Bethune, Esq., of Blebo, in Fifeshire. They had no family.

kindly ways and gentle spirit, was buried quietly under a grove of sombre yew trees in the old churchyard of Monzie.<sup>1</sup>

Mr. Moncreiff had now been Lord Advocate during the greater part of twenty years. He had served under Lord Russell in two administrations, under Lord Palmerston in two, under Lord Aberdeen, and under Mr. Gladstone. Lord John, custodian of the finest tradition of the Whigs, he always held in high esteem ; but any conversation with him about the party leaders of his day made it plain that " Pam," who was now off the scene, had been his favourite chief.

In 1869 that transfer of power the real meaning of which, though forty-five long years have passed and gone since then, the country is perhaps only now beginning to see, had just been made, and we had not, in the common phrase of that time, educated our masters. Mr. Moncreiff, however, did not share all the apprehensions of Mr. Lowe. Since his review of Macaulay's History he had contributed nothing to the *Edinburgh* till, after the fall of the Russell administration and the arrival of household suffrage, he wrote an article in which he alluded to the views of those who thought that the settlement of 1832 might have been left unmolested. " In Lord Palmerston's cool and cautious hands," he says, " it is quite possible that these views might have prevailed considerably longer than they have done, without exciting much either of party difficulty or public clamour. But it is far better as it is. The growing power of the excluded class could not be restrained or diminished. It must either have remained an influence increasing day by day outside the constitution, or be embraced within it." It was safer, he is sure, to admit it within the constitution. He thinks that men of violent opinions and slender culture may be elected, and that there

<sup>1</sup> The Commission reported that Bridgwater had been corrupt since the beginning of the century, and that corrupt practices had prevailed extensively in 1867, 1868, and at every election as far back as 1831. The Reform Act of 1832 increased the constituency to between 600 and 700, of whom it was said only about 50 were beyond being bribed. The Reform Act of 1867 doubled the number of electors ; but they were of the same character. In spite of protests by the inhabitants the borough was disfranchised on July 4, 1870 : 33 & 34 Vict. c. 21.

may be an increase of undue influence and corruption ; but he believes that these evils will be corrected by the growing sense of public duty.<sup>1</sup>

This fairly represents the opinion of most Whigs in 1868, when the Radical leaders were beckoning the masses, whom the Conservative party had suddenly entrusted with so much power, to go with them into the unknown. It was certain that, whatever path their captains might wish to take, the masses would not follow the *via media* of the Whigs much longer ; and perhaps it was a fortunate coincidence—so strangely do things befall public men in their private lives—that Mr. Moncreiff had, by whatever dire mishap it came his way, a high judicial station awaiting him just at the very time when he would have found himself out of sympathy with some at least of the legislation which followed the lowering of the franchise. He would not have accepted an ordinary judgeship ; but the death of Lord Glenalmond gave him the chair of the Second Division, where he presided for nineteen years. Though not equal to his father as a judge, his legal understanding and practical knowledge of Scottish jurisprudence enabled him to perform his duties on the bench to the satisfaction of the public. No one knew better how to deal with facts, however complicated ; and his judgments were always expressed in the appropriate and polished language which had distinguished his speeches at the bar and in the House of Commons.

Soon after he became a judge he received a baronetcy.<sup>2</sup> In January, 1874, he was raised to the peerage, and took his seat (April 20) as Baron Moncreiff of Tulliebole in the House of Lords, where he spoke a few times on such matters as the Judicature Bill, and other legal topics ; but the remaining years of his life were almost wholly spent in Scotland.

<sup>1</sup> *Edinburgh Review*, October, 1868, Article 9. (*Address of the Right Hon. Benjamin Disraeli, M.P., First Lord of the Treasury, to the Electors of the County of Buckingham.*)

<sup>2</sup> May, 1871. The older baronetcy, then held by his brother Sir Henry, dates back to 1626. The title of the Tulliebole family to this was called in question at one time ; and a claim was informally made on behalf of Sir Alexander Moncrieff, K.C.B., as representing another branch, the Moncrieffs of Culfargie. The points at issue are partially stated in *the House of Moncrieff* (1890), by Mr. George Seton, Advocate.



For many years Lord Moncreiff had been in great demand for speeches on such occasions as the centenaries of Scott and Chalmers; and it would be difficult to say how many addresses and lectures he delivered in the course of his life. "For the first time since the creation of the world," Cockburn wrote so far back as 1853, "a Lord Advocate has delivered a popular lecture to a popular audience. This feat was performed on the evening of last Friday, 1st April, A.D. 1853, by the present Lord Advocate, James Moncreiff, in the hall of the Philosophical Institute of Edinburgh."<sup>1</sup> Year after year he complied with the demands which poured in upon him. In December, 1855, he addresses the members of the Glasgow Athenæum.<sup>2</sup> A lecture on "Jurisprudence and the Amendment of the Law," he dedicates to the Faculty of Advocates. At a "conversazione" of the Edinburgh Chamber of Commerce, on the evening of the 3rd of January, 1862, his brother Sir Henry, Mr. Adam Black, Mr. Bouverie Primrose, and a number of Edinburgh worthies, listen while he discourses pleasantly on "A Happy New Year." Legal education, Scottish history, many other topics, he deals with from time to time, sometimes in one place and sometimes in another. In 1877 he gives his final opinions on the question of Church and State in Scotland. "I prefer," he says, "to remain on the old neutral vantage ground—to cherish the traditions of our fathers and the lessons of history, and leave it to time to unravel problems which we cannot and need not solve." He speaks as a convinced Free Churchman, but will take no part in the movement for disestablishment. "I have shown," were his last words, "what a State Church was and might still have been. But it is easier to destroy than to restore."<sup>3</sup>

One of his last addresses was "An Educational Retro-

<sup>1</sup> His subject was one hundred years of progress. There was great curiosity to hear a Lord Advocate lecturing, and, a newspaper report says, "The audience was unusually numerous."

<sup>2</sup> *British Eloquence of the Nineteenth Century*, 3rd Series, p. 137.

<sup>3</sup> *Church and State (in Scotland) from the Reformation to 1843*. This was one of a course of three lectures delivered by Lord Moncreiff, Dr. Rainy, the leader of the disestablishment party in the Free Church, and Mr. Taylor Innes, author of *The Law of Creeds in Scotland*.

spect," which he gave at the opening (April, 1886) of the thirty-eighth school erected by the School Board of Glasgow. He spoke of the short life of great questions, and of how, in former times, "a perfect barricade of vital questions was carefully reared between the people and their education"; glanced at his own "educational campaigns," as he put it; and said that, though he had failed to settle the question of national education for Scotland, he was satisfied with what had now been done, and quite contented with his own share, however humble, in bringing it about.

These productions were not laboriously composed. His opinions were not hastily formed; but they were often very hastily put on paper. His rectorial address at Edinburgh was fixed for the 18th of January (1869); and shortly before that a young man who knew what was likely to happen went and asked him if it was ready. He had not touched it, and did not write a line till three days before it was to be delivered. But he composed with such facility, wrote so fast, and produced such good matter that it sounded as if a long time had been spent in preparing it. He had also such fluency, and such a thorough knowledge of his topics, that he could speak from a few scanty notes what seemed to be a carefully written address. In the winter of 1859 he gave a lecture at Exeter Hall on the influence of Knox and the Scottish Reformation on England, and, having been asked to publish it, revised a newspaper report, and sent it to the printer with a note explaining that he had not written it before it was delivered, which was the reason why it bore marks of "careless and defective composition."

On one occasion this habit of rapidly dashing off lectures involved him in a correspondence with Bishop Colenso, whose views he criticized in January, 1867.<sup>1</sup> He had formed his opinion of Bishop Colenso's theories by reading reviews, extracts, and letters in the newspapers, and admitted this in his lecture quite frankly. "I have not," he said, "read Bishop Colenso's book, I must fairly avow." An interchange

<sup>1</sup> *Reflections on the Relation of Recent Scientific Inquiries to the Received Teaching of Scripture*, 1867. This lecture was given first at Glasgow, and again, by request, at Edinburgh.

of letters followed, as rapidly as the distance between Natal and Edinburgh would allow. The Bishop finds fault with his critic for not having read the book he attacks ; and the critic, finding that the Bishop has seen some extracts from one of his letters in *The Times* before it reached him, and sent an answer, immediately makes a good point : "Perhaps as your original remonstrance related to my criticizing your works without having studied them, you wished to redress the balance of complaint by answering my letter before receiving it." The controversy was carried on with great spirit and ever-growing earnestness for a year, and at last ended in a drawn battle, both combatants of course retaining their original positions.

His popularity as a public speaker was so great that he was inundated with requests for these lectures and addresses, and gave his services with a profuse generosity which was quite remarkable in a man who was all the time overburdened with public duties, and deeply immersed in the serious business of law and politics. But fortunately his lectures gave him on the whole very little trouble. He knew what he wished to say, and could gratify his audiences with something which, if not always very deep or pregnant, was worth hearing even if he could have made it better with more time and labour, and was invariably attractive from the easy grace with which he spoke. He had a habit of delaying his preparations for these public appearances to the last possible moment. It would be absurd to say that a man who lived so full a life was indolent ; but he had certainly fits of procrastination, especially in the matter of writing. Sometimes, intending to review some work which interested him, he would make notes, jot down his ideas, and put off beginning—even when he had the time—from day to day until at last it was too late, and it ended by his not writing a line. He had, in the course of his life, several literary projects which were never executed. One of these was the *Life of Lord Cockburn*, all the materials for which were in the hands of Lord Rutherford after Cockburn's death, and when Rutherford died were passed on to him. But his incessant



work as Lord Advocate left no leisure for such a task. The Memorials and Journals are, however, more valuable published by themselves than if they had been used merely as the authorities for a biography.

He once thought of writing a romance founded on history, and one summer in Perthshire—this was after he was on the bench—amused himself by discussing several intricate plots with a young member of the bar who lived near him. The period was to be the end of the seventeenth century, about the time of the Massacre of Glencoe, which he thought would be a fine subject for fiction. The Master of Stair and other Scottish statesmen were to be described, with the intrigues of that day. But nothing came of this. In 1871, however, he published a short volume with a slight plot and a love story running through it. It is not so much a novel, as a brightly written causerie on men and manners and country pursuits, such as trout-fishing, in which he took such delight that he thought nothing of tramping home after an afternoon at the Almond, quite pleased if he had two or three small fish in his basket.<sup>1</sup>

Lord Moncreiff contributed, in all, ten articles to the *Edinburgh Review*. With the exception of what he wrote in 1868,<sup>2</sup> none of them were produced while he was in the House of Commons. But in 1874 he had a congenial theme in the newly published "Journal of Henry Cockburn," which he reviewed in the July number. He followed this in October with a very interesting article on the first three volumes of the Greville Memoirs, for bringing out which Mr. Henry Reeve, the editor of the *Edinburgh Review*, had lately, as least so people always said, incurred displeasure in a very high quarter. Another good article was on General Sir Thomas Graham of Balgowan, the "fine Perthshire squire," as Lord Moncreiff called him, who won the battle of Barossa, of whom a memoir had just appeared.<sup>3</sup> Edinburgh society in the second half of the eighteenth century, old Scottish

<sup>1</sup> *A Visit to my Discontented Cousin* (reprinted, with additions, from *Fraser's Magazine*, 1871).

<sup>2</sup> *Supra*, p. 252.

<sup>3</sup> *The Life of Thomas Graham, Lord Lynedoch*; by Captain A. M. Delavoye, who, when compiling the records of the 90th Light Infantry,



judges, the Whig leaders, and the Parliament House in former times, he discussed when reviewing a volume on the title-page of which the author, with good reason, printed the favourite toast of the Whigs for many years :—"The Independence of the Scottish Bar."<sup>1</sup>

In 1892 a delightful monograph on Craigcrook was published, for which Lord Moncreiff drew, in twenty-nine pages, a charming picture from memory of Jeffrey and his circle, whom he calls the Brotherhood.<sup>2</sup> "I knew Craigcrook," he says, "as a child, as a schoolboy, and as a college lad"; and it was a great pleasure to him to recall these golden days.

By this time he was no longer on the bench. Old age had come at last, and brought with it the usual bereavements. Lady Moncreiff, who had rejoiced in the brilliant career of the husband she had married in her youth forty-six years before, died in December, 1881. His brother Sir Henry, who took a great part in guiding the councils of their Church, had lived to a ripe old age, and died in 1883. The friends of his youth and middle age were going one by one; and the coming of another generation, too, made the veteran feel that he need not linger any longer on the stage. His eldest son, a most lovable man, who inherited much of his father's fine nature, and was in his day perhaps the most socially popular advocate who walked the floor of the Parliament House, was now on the bench.<sup>3</sup> A son-in-

was furnished with a collection of MSS. by the heir in line of the family of Graham of Balgowan, Mr. Maxtone Graham of Cultoquhey, where Lord Moncreiff lived for some years in summer.

<sup>1</sup> *The Hon. Henry Erskine, Lord Advocate of Scotland*; by Lieut.-Colonel Alexander Fergusson, 1882. Lord Moncreiff's Articles in the *Edinburgh Review* were: April, 1847, Art. 7 (Church History); July, 1849, Art. 10 (Macaulay); October, 1868, Art. 9 (Disraeli's Address to Bucks); July, 1874, Art. 9, (Lord Cockburn); October, 1874, Art. 9 (Greville Memoirs); October, 1880, Art. 1 (Lord Lynedoch); July, 1882, Art. 5 (Red Book of Menteith) January, 1883, Art. 8 (Henry Erskine); July, 1890, Art. 1 (Earls of Haddington); July 1891, Art. 10 (Earls of Leven and Melville).

<sup>2</sup> *Lord Jeffrey and Craigcrook: a History of the Castle* (David Douglas, Edin., 1892), pp. 15-44. Only 150 copies were printed of this volume, which was planned by Dr. James Taylor, D.D., and published after his death.

<sup>3</sup> The Hon. Henry James Moncreiff, who took the title of Lord Wellwood on becoming a judge, succeeded his father as second Baron Moncreiff of Tulliebole, and died on March 3, 1909.

law, one of the greatest counsel of his time, had been Dean of Faculty, and already twice Lord Advocate.<sup>1</sup> In 1888, the year in which his son became a judge, the infirmities of age were creeping over Lord Moncreiff. He was turning deaf; his voice, once so strong, was now that of an old man; there were other signs of failing strength; and he retired into private life.

He lived on till the spring of 1895, when he was troubled by alarming fits of breathlessness. There was a partial recovery; but he was now in his eighty-fifth year, and on the afternoon of Saturday the 27th of April the end came.

Long before his retirement Lord Moncreiff, who had preserved a number of interesting letters which he received from public men between 1840 and 1870, began to write his reminiscences; but when he reached the period of contemporaries who were still alive he found it difficult to continue. So they were never finished. After his death the question of publication was considered by his family; but they still remain in manuscript. These thirty years, from 1840 to 1870, more than cover the whole period of Lord Moncreiff's political career. During most of that time the country was governed on Whig principles, even while the short administrations of Lord Derby and Mr. Disraeli came and went; and it may safely be said that few periods have been so fruitful of progress in Scotland. Lord Moncreiff took a great part in all the transactions of these years. Perhaps too much was attempted in some departments of law reform, and perhaps a good deal of what was done might have been better done; but he made no rash experiments, and all his measures were consistent with that reverence for justice, for toleration in civil and religious matters, and for the liberty and the property of rich and poor alike, on which was founded the creed of the Whig party he so faithfully served.

<sup>1</sup> The Hon. Marianne Eliza, Lord Moncreiff's second daughter, had married (1877) John Blair Balfour, who was Lord Advocate from 1881 to 1885, and again in 1886. He held the same office from 1892 to 1895, and in 1899 was made Lord President. Raised to the peerage (1902) as Baron Kinross of Glasclune, he died in 1905. Lady Kinross died on September 25, 1913.

## CHAPTER VII

GEORGE YOUNG

AT the end of the Session of 1869 Mr. Gladstone promised an inquiry into the Scottish departments.<sup>1</sup> A Commission was appointed, with instructions to "ascertain how far it might be possible to effect economy in the management of the Public Boards in Scotland, it having been represented to her Majesty's Government that if the Boards were concentrated under one Parliamentary head, considerable financial reductions might be made."

Sir Robert Anstruther, Mr. Duncan McLaren, and Mr. Crawford, Member for the Ayr district, who had taken the lead in pressing for this inquiry, were in favour of appointing a Secretary, with powers analogous to those of the Chief Secretary for Ireland, to be head of all the civil departments in Scotland, and confining the functions of the Lord Advocate to the conduct of legal bills through Parliament, and to the performance of his duties as first law officer of the Crown in Scotland. Lord Moncreiff, however, and Mr. E. S. Gordon were against any change; and the Commissioners reported that they saw no necessity for appointing a Secretary of State. He would, they said, "Supersede, rather than act together with the Lord Advocate, while the government of Scotland would be removed from the Home Secretary." But an Under-Secretary might be appointed; and this would, they thought, silence the complaint that the government of Scotland was conducted too much in deference to legal ideas.<sup>2</sup> The report came out in March, 1870;

<sup>1</sup> *Supra*, p. 248.

<sup>2</sup> *Report on Civil Departments in Scotland*: Parl. Papers, 1870, (64), xviii. 1.

and no change was made in the position of the Lord Advocate during the time of Lord Moncreiff's successor, who sat in the House of Commons on the old footing from February, 1870, till August, 1873.

Mr. George Young was the only son of Alexander Young of Rosefield, Kirkcudbrightshire, procurator fiscal of Dumfriesshire, and his wife Marian, daughter of William Corsan of Dalwhat in Kirkcudbrightshire. Born at Dumfries on the 2nd of July, 1819, he was sent to Dumfries Academy, where at that time a very efficient staff worked under Mr. John Macmillan, the rector, who had been one of John Bright's teachers during his schooldays at York, and was afterwards a classical master in the High School of Edinburgh. "I bless and thank him for the instruction I received," said Mr. Young after many years, when he was chairman at a dinner given in honour of Mr Macmillan on resigning his mastership at the High School (July, 1866). His education was completed at the University of Edinburgh, whence he passed to the Scottish bar on the 2nd of December, 1840.

His father's business connexions, the good impression he made on the young lawyers he met in the Scots Law Society, which he joined in November, 1838, and still more his own aptitude for the calling of an advocate, gained him from the first a larger share of practice than falls to the lot of most juniors. He was on the Whig side of the bar, and was made an advocate depute in 1849 by Lord Advocate Rutherford. Four years later Mr. Moncreiff recommended him for the Sheriffship of Inverness. While holding that office he was retained at the trial of Madeleine Smith; and though the eloquence of Mr. Inglis probably turned the scale in favour of the accused, she is said to have owed her acquittal largely to the advice given by Mr. Young during the preparation of the defence. In 1860, Lord Advocate Moncreiff again promoted him, and he became Sheriff of Haddingtonshire.

Two years later he conducted an inquiry of an unusual character, which arose out of a case tried at Glasgow during the autumn circuit of 1862. The family of a Mr. John



Fleming, who lived at 17, Sandyford Place, Glasgow, used to spend the summer months on the Clyde, where he joined them every Saturday, returning to business on Monday. On these occasions his father James Fleming, a very old man, remained at the house in Glasgow with a servant named Jessie Macpherson. On the morning of Monday the 7th of July, 1862, when Mr. John Fleming and a son came back the door was opened by old Fleming, who said that Jessie Macpherson had gone away; but, on going through the house, they found her dead body lying in her bedroom with wounds which proved that she had been murdered. The old man was arrested, and made a declaration in the usual form, in which he denied all knowledge of the crime. Some silver plate was missing, and bloody footmarks, clearly not those of old Fleming, were found. The police discovered that the stolen plate had been pawned by a woman named Jessie McLachlan, who was arrested. She admitted the pawning, but said that old Fleming had brought the articles to her and asked her to dispose of them. Some clothes which had been taken from the house were traced to her; and the bloody marks were found to correspond with her feet. She was then charged with the murder, and the old man was released.

The trial took place before Lord Deas and a jury, at Glasgow on the 17th of September 1862. The prosecution was conducted by Mr. Adam Gifford, then an advocate depute, and afterwards a judge with the title of Lord Gifford. The prisoner was defended by Mr. Andrew Rutherford Clark. Old Fleming, who was the principal witness, swore that he had thought Jessie Macpherson was not in the house, and had looked after himself from Saturday till Monday, always expecting her to return. A searching cross-examination by Mr. Rutherford Clark failed to break him down; and, if his story was true, there could be little doubt, from the other evidence, of the prisoner's guilt.

Her counsel made a very able defence; and Mr. Gifford, as public prosecutor, was so fair that the *English Law Magazine* afterwards said that the advocate depute had been more

judicial than the judge, who summed up the evidence very strongly against the prisoner. His charge, which occupied four hours, had such an influence on the jury that they took only fifteen minutes to consider their verdict. They found the accused guilty. Mr. Gifford having moved for sentence, Lord Deas asked the prisoner the usual question—whether she had anything to say. Mr. Rutherford Clark then read a statement on behalf of his client. This statement, in which the prisoner admitted that she had been present at the murder, which she said had been committed by old Fleming, had been made to her solicitors six weeks before the trial; but when it was laid before Mr. Rutherford Clark, he had decided, against the wish of the prisoner, not to use it, as he thought the Crown would not be able to prove that she had been in the house.

Her story, the reading of which caused a great sensation, was that she had called on Jessie Macpherson, and found her in the kitchen with Fleming. They had some drink with him, and she was sent out for more. On her return she found Macpherson lying wounded on the floor. The old man admitted having hurt her. They put her to bed, and Macpherson told her, when they were alone, that she had resented some familiarities on the part of Fleming, who had then knocked her down. McLachlan, according to her story, went and spoke to Fleming, who made her swear, “on the family Bible,” that she would never reveal what had happened. Later in the night, when she was leaving, she heard a cry, went back, and saw Fleming kill Macpherson with a cleaver. Then, when the woman was dead, he gave her the silver plate, and told her to take it away and pawn it, in order to make the police believe there had been a robbery.<sup>1</sup> This statement having been read, Lord Deas told the prisoner that it was a tissue of wicked lies, and sentenced her to be executed on the 11th of October.

The management of this case by Lord Deas made a bad impression. There was a strong feeling against old

<sup>1</sup> The whole statement is at p. 220 of *The Trial of Jessie McLachlan*, Edited by William Roughead, Writer to the Signet (*Notable Scottish Trials*, 1911).

Fleming. Sir Archibald Alison, Sheriff of Lanarkshire, thought the accused had not had a fair trial. The press in England as well as in Scotland took the matter up. There were petitions for a reprieve; and protests were made to the Lord Advocate and to Sir George Grey, the Home Secretary. The petitions were sent, in accordance with Scottish practice, to the Lord Justice Clerk (Inglis) who thought the verdict was right, and that the sentence should be carried out. But the Home Secretary came to the conclusion that, in view of the prisoner's statement, there ought to be an inquiry. The question was submitted to the Lord Advocate; and he arranged that Mr. Young should make an investigation. At the beginning of October a respite till the 1st of November was granted; and Mr. Young, who had no power to compel the attendance of witnesses or put them on oath, examined a number of persons in private (17-20 Oct.). Sir Archibald Alison, who was present at the hearing of the evidence, wrote a memorial in favour of the prisoner, which he sent to Mr. Young, by whom it was transmitted to the Home Office. Mr. Young sent up his report on the 24th of October; a farther respite was granted; and on the 6th of November the sentence was commuted to penal servitude for life.

These proceedings were afterwards discussed in the House of Commons. The Home Secretary was asked to produce the judge's notes of the evidence and Mr. Young's report; but he declined on the ground that it would be "highly inconvenient if the House of Commons became a court of appeal in criminal cases." Lord Advocate Moncreiff, in answer to an accusation of having used his influence with the Home Office in favour of a convict, said that, though the functions of the public prosecutor ended when the jury had found a prisoner guilty, yet when doubts arose it was his duty to act as a Minister of Justice, and that having been consulted by the Home Secretary, who had resolved to have an inquiry, he had given his assistance.

There can be no doubt, however, that a Home Office Commission, especially when the Commissioner cannot take evi-



dence on oath, is a most unsatisfactory method of review ; and no such Commission has been issued for Scotland since 1862. But from time to time there are cases which ought to be reviewed ; and a criminal appeal court is obviously the proper tribunal for re-opening them. There is no appeal against a sentence pronounced in the High Court of Justiciary. In the early part of the eighteenth century it was for a time supposed that criminal cases might be taken on appeal to the House of Lords ; and in one well-known case a petition was presented to the Crown, by a prisoner under sentence of death, praying for a respite pending an appeal. The petition was laid before the Lord Advocate of the day for his opinion. He reported that no appeal was competent ; and the Government ordered the convict to be executed. This was in 1765. An appeal was brought in another case some years later. The House of Lords rejected it as incompetent ; and a judgment to the same effect was pronounced so late as 1876.<sup>1</sup> This settled the law, which was, indeed, never really doubtful ; but it is open to argument whether cases tried before a single judge sitting as the High Court of Justiciary, as often happens in Scotland, should not be open to review in a court of appeal, which could easily be formed out of the existing Scottish bench.

Since 1855 the Solicitor-General for Scotland had been Mr. Edward Maitland, who was counsel with Lord Advocate Moncreiff at the trial of Madeleine Smith, and in other important prosecutions during the last seven years whenever the Whigs were in office ; but on the retirement of Lord Ivory, one of the oldest judges on the bench, he took the vacant chair, and Mr. Young was appointed Solicitor-General (Nov. 1862).

His practice was now enormous, swollen, it was sometimes

<sup>1</sup> *Mackintosh* (appellant) v. *the Lord Advocate*, *Law Reports, Appeals*, 1876-1877, p. 41. Lord Advocate Gordon argued the case against the Appeal on March 23, 1876. Lord Chancellor Cairns had no doubt. "The sentences and orders," he said, "of the Court of Justiciary are by Statute final and conclusive." The report sent up to the Government in 1765 by the Lord Advocate (Sir Thomas Miller) traces the history of the law relating to appeals minutely. It has never been printed, but will be found in the Record Office, S.P., Scotland, Series II, Vol. 24, No. 119<sup>b</sup>.



said, beyond all reasonable limits. There was a good deal of grumbling among the Writers to the Signet and solicitors, who said that he took more business than any one man could possibly manage ; and yet they scrambled to retain him. Tales went round of papers, sent to him with heavy fees, which were never opened till he came into court and picked up the points to be argued from his juniors ; but he had such a power of getting to the root of a case that, when all was said and done, his clients seldom complained. If there were hostile witnesses to be examined he was invaluable ; and when speaking at the bar he excelled most pleaders of his day in the art of pressing home just the very points on which he was likely to carry the judges with him.

In jury trials he was often opposed to Mr. Moncreiff. The honours were about equally divided between them ; but the contrast between their styles was very noticeable. Mr. Moncreiff was all fire and eloquence, and often appealed to the sympathy and imagination of the jury. Mr. Young was cool, matter-of-fact, and frequently sarcastic. One day, during a trial before Lord President Inglis, a well known member of the bar, Mr. Henry Lancaster, came into court for a few minutes. "The usual thing, of course," he whispered to a young man who was listening to the case, "Moncreiff lights the fire, Young pours cold water on it, and the President cleans up the grate." In another case Mr. Moncreiff's client had brought an action for damages against the doctors of a lunatic asylum for keeping him in confinement. He had shouted, kicked, and scribbled all sorts of disgusting language on the walls. All the evidence pointed to madness ; but Mr. Moncreiff, the evening before he was to address the jury, looked up the passage in the *Pickwick Papers* where Mr. Winkle is seized "with a temporary attack of that species of insanity which originates in a sense of injury," and next morning enlivened his speech by reading it to the jury as an illustration of how, in the opinion of Dickens, whom he called "that profound student of human nature," a perfectly sane man may be goaded into behaving as if he had lost his senses. Mr. Young made short work of

this. "My learned friend," he said, nodding his head slowly, "has gone to a work of fiction for an example of how foolishly a sane man may sometimes behave. But we are dealing here with facts, not fiction, and all I can say is"—here he swung his tall figure round, and pointed to Mr. Moncreiff's client—"that if that man who is sitting there was sane when he behaved as he did, he must be the most degraded wretch that ever breathed."

He was very severe in cross-examination; but when he met his match, he took it in good part, and never resented a spirited answer. There was a heavy case from South America, in the course of which it came out that a man had been shot in cold blood. Mr. Young was cross-examining the mistress of President Lopez of Paraguay, a very handsome woman; and when he came to the incident of the murder he asked her: "Now, madam, what villain did that deed?" She drew herself up, and replied, "Sir, he was no villain. He was the President of a republic." "Quite so, quite right," said Mr. Young, and added, in an undertone to one of his juniors, "Devilish fine woman this, mind you!"

He treated the judges with the utmost coolness. One example may be given of this. Lord Shand had a habit of walking about on the bench while counsel were speaking. "My Lord," said Mr. Young, stopping suddenly in the middle of a speech one day, "I really cannot address a moving object." The judge at once sat down with a little deprecatory smile, and Mr. Young calmly continued his argument.<sup>1</sup>

It was never thought necessary that the Solicitor-General

<sup>1</sup> Lord Shand, afterwards (1890-1904) a Lord of Appeal as Baron Shand of Woodhouse, was of unusually small stature, of a very nimble brain, and of most insinuating manners. When Mr. Young was Lord Advocate, and his friend in constant attendance on him, a member of the junior bar made the following parody on the famous Address to the Soul:—

"Shandule, parvule, blandule,  
Amicus hospesque Advocati,  
Quae nunc in loca abibis,  
Vafer, subtile, callide!"

for Scotland should have a seat in Parliament ; but in 1865, when there was a vacancy in the Wigtown district (caused by the appointment of Sir William Dunbar, the sitting member, as chairman of the Audit Board) Mr. Young accepted an invitation to stand. "I am a supporter of Lord Palmerston's administration," he told the electors. "I entirely approve of the policy according to which that distinguished statesman and his colleagues have administered the affairs of the country both at home and abroad." That was all the average Scottish constituency wished to know ; and he was elected by a show of hands at the cross of Wigtown on the 15th of April. Three months later he was again returned without opposition at the general election (July 14, 1865).

In the House of Commons Mr. Young, though at first he seldom rose, made a good impression at once. One of his best appearances was on the second reading of the Reform Bill of 1866. He spoke at great length, and walked out as soon as he had finished ; and Sir Stafford Northcote, who followed him in the debate, said he was sorry the Solicitor-General for Scotland had left, as he had wished to tell him under what an obligation he had laid the House. "It was impossible," Sir Stafford said, "to listen to that speech without a feeling of congratulation that the subject was in his hands. He has treated it in a manner worthy of its importance ; and we have listened to a speech that was distinguished for reasoning, whether we agree with it or not." <sup>1</sup>

Out of office in 1867 and 1868, during the administrations of Lord Derby and Mr. Disraeli, he became Solicitor-General again after the Liberal victory at the general election of 1868, when he defeated Mr. Vans Agnew in the Wigtown district. He was re-elected, on taking office, without a contest on the 4th of January, 1869.

For some time Mr. Young, conscious of great powers and by nature uneasy in a subordinate position, had been waiting, somewhat impatiently it was understood, for the retirement of Mr. Moncreiff ; but in the autumn of 1869 he at last found

<sup>1</sup> *Hansard*, clxxxii. 1815.



himself Lord Advocate, and presented his commission to Lord President Inglis in the First Division on the same day (October 19) as Mr. Moncreiff took his seat as Lord Justice Clerk. He was called to the English bar on the 24th of November by a special resolution of the Middle Temple, of which two years later he was elected an honorary bencher.<sup>1</sup>

This compliment from the bar of England gratified him ; but in Scotland there was a feeling of uneasiness lest it should encourage the new Lord Advocate in certain far-reaching schemes of law reform which he was said to be contemplating. He had no sympathy with a rigid adherence to the Scottish system of jurisprudence, and was known to entertain plans for the gradual assimilation of the laws in both countries. In the department of commercial law this was obviously desirable in the interest of traders, and Mr. Moncreiff had taken some long steps in that direction<sup>2</sup> ; but Mr. Young was believed to favour changes which would merge the law of Scotland in that of England, and diminish the authority of the national judges. It was even rumoured that he wished to abolish the Court of Session, and transfer most of the legal business of Scotland to Westminster.

A code containing a common body of law applicable to both countries was his ideal. At that time codification was in the air. The days of Blackstone in England and Stair in Scotland were long past. No legal writer, however industrious, could venture on the task of compiling, singlehanded, a treatise on the whole law of either country. Parliament was rapidly becoming an over-worked manufactory of statutes which either partially altered the law, or set up wholly new rules to meet the requirements of modern life, the growth of trade, and the changed methods of conducting business which came into use about the middle of the nineteenth century. The era of frantic haste to push bills through anyhow, from which the country now suffers, had not yet begun. But a multiplicity of enactments on every subject was the order of the day ; and even a perusal of some

<sup>1</sup> November 17, 1871.

<sup>2</sup> *E.g.* The Mercantile Law Amendment Act of 1856, 19 and 20 Vict., c. 60.



chronological table, or any such humble guide to the arid wilderness of the statute law, with its long array of amending Acts, is enough to show how the work of Parliament was being carried on.

To embrace the whole of this vast legislative output in a code, or rather in a series of codes, was the dream of at least one generation of Victorian jurists. The Merchant Shipping Act of 1854 was held up as an example of what might be done by codification. Its four hundred and fifty-eight clauses went through both Houses of Parliament almost without discussion; but Mr. Cardwell, who was President of the Board of Trade at that time, had been one of Sir Robert Peel's disciples, and saw to it that there was no hasty or inefficient drafting. Mr. Moncreiff's Bankruptcy Act of 1856 amounted to a code of that branch of Scottish law. A Scottish Titles to Land Act of 1868 was a similar statute; and in England the rules of evidence were consolidated in one bill, which was, however, withdrawn. Mr. Young had been fascinated by the idea of working in concert with Sir John Coleridge and other members of the English bar, and framing a series of codes in such a way as to obliterate many of the differences between English and Scottish jurisprudence. But all such attempts to codify the existing laws were useless. The leaders of the new democracy were calling for new laws, and making it plain that some old customs, some presumptions of law, some vested interests, even some harmless pleasures which had hitherto been treated as the natural adjuncts of rank, or wealth, or the ownership of land, were to be called in question.

Since the first Reform Act, particularly of late years, there had been a general improvement in the conditions of life among the working classes in Scotland. Many abuses had been removed; and the Scottish reformers now concentrated their attention on a few well-defined and practical points. None of these, if we except the great question of national education, excited more interest than certain grievances of which land law reformers complained; and when Mr.

Young became Lord Advocate it was known that the Government would be pressed to legislate for the tenant farmers—and particularly on two questions.

From time immemorial the landlord in Scotland always had, as security for the rent, not only the tenant's obligations in the lease, but also a right to the crops, cattle, horses, implements, and household furniture on the farm. The crops of each year were attachable as security for the rent of that year; and if the farmer fell into arrears, and the landlord took no steps to enforce payment, the crops of several years might be retained, each crop as security for its particular year. Cattle, implements, and furniture could not be held for the rent of a particular year, but were subject to the landlord's general right for three months from the time the rent became due.

This was the "law of agricultural hypothec," as it was called, until 1867, when an act was passed which provided that the landlord's claim to crops, cattle, and horses could not be enforced beyond three months after the rent was payable, unless he secured it by making the tenant insolvent by legal process; and at the same time implements, and manures and feeding stuffs not produced on the farm, as well as household furniture, were set free from the landlord's claim.<sup>1</sup>

This was the law in 1869, when Mr. Young took office as Lord Advocate; and in practical working it came to this—that when a tenant farmer was in arrears the landlord could, by exercising his claim to the crops at one time, and to the cattle and horses at another, put himself in such a position that, if the tenant became quite insolvent, he had a preferable claim for perhaps two years, while there might be nothing left but a small dividend for other creditors.

One effect of this system was that many farmers could not obtain credit, and were unable, therefore, to buy what was necessary to work the land to the best advantage. Another evil was that a poor landlord was

<sup>1</sup> 30 and 31 Vict., c. 42.

tempted to accept the tenant who offered the highest rent, without regard to whether he possessed the capital needed to do full justice to the soil. The landlord was, moreover, encouraged to let his property be overrun by an excessive stock of ground game ; for though the tenant might be ruined by hares and rabbits, the rent was practically secured by the law of hypothec, which thus enabled the landlord to receive two rents, one from the farming tenant, and another from the sporting tenant or game dealer, who paid him for animals fed at the farmer's expense.

In this state of things the total abolition of the law of agricultural hypothec was demanded. The remedy sought for the injury done to farming by hares and rabbits was to give the tenant an inalienable right to kill them ; and for some years there was seldom a political meeting in any Scottish county at which something was not heard about the law of hypothec and ground game.

Another question was the decrease in the rural population. The state of the Highlands was attracting attention. There were people in England who spoke as if the deer "forests" were vast regions covered with trees, which might be cleared and turned into farms or small holdings. But every one in Scotland knew that they were barren mountains, mere treeless wastes of rock, and swamp, and heather, which could never be cultivated. The way in which parts of Sutherland had been cleared of their inhabitants to make way for sheep, which in turn made way for deer, was sad ; but even in the lower parts of the glens the soil and the climate were such that the crofters, whose ancestors had been the armed retainers of the chiefs, had barely been able to eke out a living. A Select Committee, appointed to inquire into the laws for the protection of deer, reported that there had been complaints against the deer forests on two grounds. It was said, first, that they tended to the depopulation of the country ; and secondly, that, by the displacement of sheep to make way for deer they had diminished the food supply, and so raised the price to the consumer. The evidence, however, convinced the

Committee that these complaints were not well founded. One great cause of depopulation was, it seemed, not the deer forests, but the suppression of the illicit whisky stills which had enabled many small holders to make a precarious livelihood. The complaints of a diminution of the food supply were, the report said, exaggerated.<sup>1</sup>

The deer forests, indeed, were never fitted for cultivation ; but there were other parts of the country, on the confines of the Highlands and in the Lowlands, where the soil was arable, and where at one time there had been many small farms and crofts, with gardens and cottages which were the homes of industrious and frugal working families. The abolition of the small farms, and the removal of the crofters, was a misfortune to farmers ; for it diminished the supply of men, and consequently raised the price of labour. Since 1832 the yearly pay of a ploughman in Scotland had risen by more than one half, and the wages of other farm labourers in proportion. The privileged position of the landlord, under the law of hypothec, made him tolerably safe ; but the farmer's profits had fallen in some places to almost nothing, and land on which fine crops could have been grown, if the rural population had not been driven out, was neglected. In the sixties the demand for crofts, in the few Lowland districts where they were still to be obtained, was in excess of the supply ; and it was felt that the population of the agricultural counties of Scotland was far below what it ought to be, and that this had been caused by the wholesale creation of large farms. But it was easier to see the evil than to find a remedy.

When Parliament met, on the 8th of February, 1870, the Scottish members hoped that, with the question of the Church of Ireland settled, and with a Lord Advocate so bent on doing great things as Mr. Young was understood to be, at least as many hours would be found for Scottish business as had been found in the days of Rutherford and Moncreiff ; but it was soon evident that Irish land and English education would consume almost all the sittings of the House of Com-

<sup>1</sup> *Parl. Papers*, 1873 (285), xiii. 1.



mons. A ground game bill, however, was at once brought in by Mr. George Loch, Member for the Wick district. But the Lord Advocate intimated that he intended to introduce a measure on behalf of the Government, and when the day fixed for the second reading of Mr. Loch's bill came it was postponed. The House of Commons was so fully occupied for the rest of the session that the Government did nothing; and the bill was at last withdrawn.<sup>1</sup>

The question of agricultural hypothec fared as badly. The Lord Advocate said (March 28), that he had brought the subject before the Government, but that "pressure of business" made it doubtful whether the Ministers could find time to deal with it; and these two questions, which the farmers of Scotland had hoped would be speedily taken up in the first Parliament elected under the extended franchise, were left unsettled.

Since Lord Colonsay began, when he was Lord Advocate, to "put common sense into our deeds," much useless lumber had been removed from the law relating to land titles; but conveyancing lawyers shrank instinctively from inroads on the feudal system. It was not that shorter and fewer deeds would mean less expense to the client. The reason rather was that it appeared safer, as it certainly was easier, to set forth at full length, one after the other, all the previous deeds by which a piece of land had been transferred, to repeat the whole on the parchment "instrument of sasine," and finish the process by recording everything in the "Register of Sasines." It was a firm belief that any change in the old system would make a landowner's title less secure that led most legal practitioners to cling to the ancient formalities when McNeill and Rutherford began to attack them.

One of the statutes of 1845 had abolished the picturesque but foolish ceremony which took place when one of the parties to a transfer of land picked up some stones and earth, and gravely gave them to the other—a piece of nonsense which was, in the eye of the law, the bailiff of the feudal superior giving actual possession to the agent of the vassal. But after

<sup>1</sup> *Commons Journals*, August 3, 1870.

this performance, together with the giving of a shilling, which meant "taking instruments" in the hands of a notary public of the Holy Roman Empire, and many other absurd impediments to the easy transfer of land, had been abolished, a great part of the cumbrous feudal system of conveyancing, handed down from the middle ages, was still in force; and in the session of 1870 Mr. Young brought in (February 24), a bill for the entire abolition of feudal tenure.<sup>1</sup> But the congestion of business was such that this measure, which would have been of great value to Scotland, made no progress, and had to be sacrificed.

Towards the end of the session, however, Mr. W. E. Forster announced that next year the Government would produce an education bill for Scotland.<sup>2</sup>

Parliament met again on the 9th of February (1871), and four days later the Lord Advocate brought in the education bill. There was a thin House. Mr. E. S. Gordon had the front Opposition bench to himself; and the only member of the Government in attendance was Mr. W. E. Forster, though Mr. Adam came in now and then from the lobby to listen for a few minutes. Mr. Young, who spoke for an hour and a half, was heard almost in silence except once, when he said that in his opinion there was really no religious difficulty in Scotland—a statement which the Scottish members received with cheers. The bill, providing for a committee of the Privy Council, to be called the Scottish Education Department, popularly elected school boards, and most of the arrangements which were afterwards embodied in the Scottish Education Act, was well received, though Mr. Gordon, who followed the Lord Advocate, made a strong appeal for inserting a clause to secure the old system of religious instruction; and at the end of February, after a long debate, it was read a second time without a division.<sup>3</sup>

Sectarian jealousy had been diminishing for some time in

<sup>1</sup> *Hansard*, cxcix. 787.

<sup>2</sup> The Edinburgh Annuity Tax question was settled in this session by the Act 33 and 34 Vict., c. 87, the history of which is given in Mackie's *Life of Duncan McLaren*, i. 203.

<sup>3</sup> *Hansard*, cciv. 946.

Scotland, where the people were tired of the long delay over the education question. In spite of all differences of opinion regarding the election and payment of the clergy, there was practical unanimity as to the religious training of children. The only serious difficulties were that the Voluntaries were still against religious instruction by teachers paid out of public funds, and that the Established Church still clung to the exclusive control of the parish schools.

The most common objection to the Lord Advocate's bill was that it placed the supervision of Scottish education in the hands of a committee sitting in London. It was feared that the Scottish Department, as proposed in the bill, would always be subordinate to the Privy Council ; and the Scottish Members were warned that they must guard vigilantly against this danger if they wished to settle the education question on a permanent basis. The Board ought, it was said, to be directly responsible to Parliament, or to a Scottish Minister. Otherwise there would be neither efficiency nor harmony in the new system ; for the tendency would always be to sacrifice Scottish wishes and interests to those of England. If there was to be a central authority, it ought to sit in Scotland. " This we know of the Lords of Council," said one speaker. " They are a very grand body when put on paper, but when we go to them they dwindle down to one single gentleman sitting on a three-footed stool, and that is the Privy Council. We send up a deputation and we get the answer, ' My Lords are of opinion that you are all wrong, and that we (that is me) are right.' "

When the General Assemblies met the Established Church resolved, by a large majority, to oppose the bill unless amendments were made securing religious instruction according to the " use and wont " of Scotland, and " protecting in its main features the present constitution of the parochial schools." <sup>1</sup> Nevertheless, the creation of local boards was not so actively opposed as it once had been ; for it was clear that if, as most Scotsmen now thought, the members of a congregation were competent to elect a minis-

<sup>1</sup> *Acts of Assembly*, May 23, 1871.



ter, the ratepayers were no less competent to elect a schoolmaster. But at a meeting held in Glasgow it was resolved to oppose the bill on no fewer than fifteen points, one of which was that the proposed school boards were to be elected by the ratepayers, "without any security that the boards thus elected will possess special qualifications for the discharge of their duties."

The Free Church resolved to petition in favour of the bill with certain amendments; and both Churches wished a Scottish Department independent of the Privy Council.<sup>1</sup> The general complaint was that in the past the Privy Council had marched over the border, with its red tape and arbitrary methods, and encouraged, by grants out of public funds, the erection of sectarian schools instead of a national system; and it was felt by many that it would perhaps be the best thing for Scotland if there could be an union of all the Presbyterian Churches, with the church and the school in every parish brought into the old intimate relations. This, it was thought, might save Scottish education from the interference of the Privy Council.

Meanwhile the bill had been closely studied at Westminster; and on the 13th of June the Lord Advocate found that notice had been given of two hundred amendments.

When this became known Mr. Duncan McLaren asked the Prime Minister to send the measure to a Select Committee representing Scottish opinion; but Mr. Gladstone said that the Lord Advocate had made up his mind that his bill must be discussed in committee of the whole House. Already two other Scottish bills, a ground game bill, and a bill for the abolition of agricultural hypothec, had been rejected. The Ballot Bill, too, had been lost; and the Army Bill was in troubled waters. The Commons had passed them both; but the Lords had thrown out the Ballot Bill, and postponed the purchase clauses of the Army Bill. On the 20th of July Mr. Gladstone told the Commons that purchase in the Army was to be abolished by royal warrant—a mode of settling the question to which some Radicals as well as the whole

<sup>1</sup> *Acts of Free Church Assembly*, May 26, 1871.



Conservative party, objected ; and on the same day it was announced that the Scottish Education Bill was to be withdrawn. There was great disappointment, and Mr. George Anderson, one of the members for Glasgow, asked Mr. Gladstone if he could not give a definite assurance that it would be the leading measure of next session. The Prime Minister's answer was that he could not quite see what "leading measure" meant. It could hardly, he said, be expected that the Ballot and Army Reform were to be put aside for an Education Bill ; but as soon as these questions were out of the way legislation for Scotland would probably come next.

It had been, on the whole, an unfruitful session for Scotland. A Public Health Act<sup>1</sup> had been carried by the Lord Advocate, who had also uprooted the ancient law of deathbed—that plant of purely Scottish growth—a step towards the assimilation of the laws of England and Scotland about which there were some differences of opinion in both countries.<sup>2</sup> Otherwise the legislation of 1871 was of little interest ; and the loss of the measures dealing with agricultural hypothec and ground game, together with the postponement of the Education Bill, caused indignation in Scotland. "Scotland is entirely set aside and neglected," Dr. Begg wrote, "during last session. Although sixty Members from Scotland have spent much time in London, they have spent it in vain. They have been allowed to hang about the Parliament and give party votes without securing any advantage for their own long-suffering constituents. The affairs of Scotland have, during the whole session, occupied only a very few hours altogether of the time of the Legislature, and there is not at present the slightest prospect that this state of matters will be much improved in the future."

The session closed in gloom for the Ministers, against whom the reaction which overthrew them at the next

<sup>1</sup> *Public Health Act*, 34 and 35 Vict., c. 38.

<sup>2</sup> The Act 34 and 35 Vict., c. 81 (August 16, 1871) abolishing the law of deathbed, is one of the shortest statutes ever passed. "No deed, instrument, or writing made by any person who shall die after the passing of this Act shall be liable to challenge for reduction *ex capite lecti*."

general election had already begun. Early in the year the Prime Minister had been warned that there was discontent at Greenwich, where some of his constituents went so far as to propose that he should be asked to resign his seat. The Chancellor of the Exchequer, always suspected by the working classes, had increased their suspicions by his proposals for the taxation of matches ; and the First Commissioner of works had a very unpleasant habit of rubbing people the wrong way which made him unpopular. These were small matters ; but the Whigs were turning restive, while all over England the nonconformist warriors had gone to their tents, where they sat brooding over the Education Act and muttering threats of vengeance.

Already Ireland had begun to block the way ; and a speech which Mr. Gladstone made at Aberdeen, on receiving the freedom of the city (September 26, 1871) proved clearly that he knew how the interests of Scotland were neglected in Parliament. " I admit," he said, " without the least hesitation that the present condition of the action of Parliament with regard to Scottish business is unsatisfactory." But the difficulty was great. Parliament was overtasked ; and imperial questions must come first. Scotland, however, had a strong claim to have the Education Bill passed ; and " if you find us voluntarily placing any exclusively English subject in front of your Education Bill—well, I was almost going to say that you may take away from me the decoration you have just conferred."

In Edinburgh, on his way home, he saw the Lord Advocate, but declined, in the midst of his short holiday, to enter on the subject of education. That subject was, however, now absorbing the attention of Scotland. In every part of the country public meetings were held ; and the opponents of the bill, those who objected to school boards, those who believed that religious teaching was in peril, and that large majority which resented the interference of the Privy Council, passed resolutions calling on Mr. Young to change his plans. " If " said one speaker (Perth, December 21), " we only let our voice be

heard, the Government, and even the Lord Advocate, will have to listen to it. I know that the Lord Advocate sticks to his position when he takes it up ; but if he hears from all parts of Scotland a distinct voice as to what we want he will frame his plans accordingly, and give us a better bill.”<sup>1</sup>

Lord Advocate Young's management of Scottish business has been described as autocratic and masterful ; and it was often said that he ruled the Scottish members with a rod of iron, and was as severe with deputations as with witnesses in cross-examination. His manner was often not conciliatory ; and he had an impatient way of driving slow-minded people straight to the point. He could never tolerate any beating about the bush. His perception of the irrelevant was so keen that it guided him like an instinct when he was debating a point of law or fact in the courts ; and in politics it was the same. Perceiving clearly, on the education question, that the only way to settle the chief difficulty was to set up in every parish an elected school board, and leave it to decide what religious instruction should be given according to the wishes of the electors, he resolutely adhered to that principle, and so escaped the rock on which the pilots of the English Act made shipwreck.

On the 12th of February (1872) he brought in his second bill, which, except for some changes in the arrangement of clauses, and some details of drafting, was almost the same as the measure of the year before.<sup>2</sup> There was no division on the first reading. But the English nonconformists, now in full revolt against the Government, were bent on trying to wreck the Scottish Education Bill, which they thought was even more favourable to the denominational system than the English Act ; and they resolved to send delegates to Scotland to speak against it.

<sup>1</sup> A recent speech by the Chancellor of the Exchequer had alarmed the friends of religious instruction as to the views of the Government. “By paying for secular results,” he said at Halifax on December 5, “and giving no payment at all for religious instruction, we adopted a system tending very forcibly to the secularization of education. I look upon this as a great benefit.”

<sup>2</sup> The bill of 1871 is *Parl. Paper*, 1871 (31), i. 509, and that of the next year *Parl. Paper*, 1872, (31), i. 519.



The most violent onslaught came from Birmingham, where it was decided that Mr. R. W. Dale must go to Scotland, and deliver a series of attacks on the Government. He was advised to stay at home, and leave the people of Scotland to manage their own affairs. "I think it better," Dr. John Cairns wrote to him (February 9, 1872), "that we should fight the battle out among ourselves, rather than be agitated by a new party, however much we sympathize with your grievances."<sup>1</sup> But Mr. Dale could not see that he was not wanted, and started on his crusade, during which he spoke at Edinburgh, Glasgow, and Aberdeen.

His best meeting was at Aberdeen, and even there he had a small and apathetic audience. "The bill of the Lord Advocate," he said, "reproduces some of the very worst features of the measure that was carried through Parliament in the session of 1870." The Privy Council was to have power to make grants to denominational schools; and "little Presbyterians" would fall into the hands of Episcopalians and forsake their hereditary faith. "Our English Act," he said, "bad as it is, leaves it to the discretion of the school boards to determine whether or not they will pay fees on behalf of the children of indigent parents who are attending denominational schools. The Lord Advocate's bill will compel the school boards of Scotland to pay fees on behalf of such children." Therefore the ratepayers of Aberdeen might have to pay fees which would be spent on buying crucifixes and pictures of the Virgin Mary and the saints. He declared that the law was to be resisted in England, and that he was sure "hundreds and thousands" in Scotland would rather suffer anything than submit. He taunted the Voluntaries for supporting such a bill; and probably mistook the cheers he received at the end of his speech for approval of all he had said. A petition in favour of amending the bill was adopted; but all Mr. Dale's rhetoric against the Government could not shake the solid liberalism of Aberdeen, any more than

<sup>1</sup> *Life and Letters of John Cairns, D.D.*, p. 545.



froth blown from the North Sea could shake the granite rocks.

A far more influential voice was raised in favour of the Lord Advocate's measure. "Lend your hearty support," the veteran Guthrie wrote in a "Letter to my fellow-countrymen," "to a bill which, conserving all that is good in our parish schools, will carry the blessing of education into every mining district, dark lane of the city, and lone Highland glen. Its compulsory clause will, with God's blessing, save thousands of unhappy children. They are now perishing for lack of knowledge; and I am certain that if many Christian, kind-hearted people knew as much as I do of the sad lives and sad ends, the misery, vice, and crime to which they have doomed these hapless creatures should the bill be thrown out, they would bitterly regret having petitioned against it."

This Letter was circulated in April, when the bill had already passed its second reading. Before the House of Commons went into Committee a resolution which suggested that the law of Scotland had required that religious instruction should be given in the schools was carried against the Government.<sup>1</sup> The Church of Scotland and the Free Church both expressed their satisfaction at what had been done; and, though amendments were desired, the general scope of the bill found acceptance in both Assemblies.

Mr. Young's difficulties were now at an end. There was a short period of doubt when the Commons rejected the preamble (relating to religious teaching) in the form in which it had been adjusted by the House of Lords, and substituted

<sup>1</sup> This was the famous "use and wont" resolution which was drawn up and moved by Mr. E. S. Gordon; "That having regard to the principles and history of the past educational legislation and practice of Scotland, which provides for instruction in the Holy Scriptures as an essential part of education, this House, while desirous of passing a measure during the present session for improvement of education in Scotland, is of opinion that the law and practice of Scotland in this respect should be continued by provisions in the bill now before the House." Mr. Glyn and Mr. Adam had a whip out against it; but it was carried by a majority of seven (216 to 209) on May 2, 1872.—*Hansard*, cexi. 288.

one of their own. But the Lords gave way ; and the bill was quietly passed on the 2nd of August.<sup>1</sup>

Thus, in spite of long and formidable opposition, a system of national education was at last set up in Scotland. Though Lord Advocate Young reaped the harvest of a field which had been sowed by others, it was his sagacity and foresight that carried the bill through Parliament. He had seen at once that the "use and wont" resolution carried against him, and the preamble dealing with religious teaching, would not in any way affect the practical working of his measure ; but his solution of the religious difficulty was possible only because there was in Scotland neither that mortal hatred between Church and Chapel which is found in England, nor any difference in the dogmas which were accepted by the various branches of Presbyterianism. As for the comparatively small minority who belonged to other denominations, they had the conscience clause ; and it turned out that after all the much dreaded religious question did not interfere with the smooth working of the Act. Presbyterians, Episcopalians, and Roman Catholics were elected, and sat together on the school boards with wonderfully little friction ; and the religious training of the young continued unchanged in the parish schools.<sup>2</sup>

It is possible that if there had been no disruption of the Scottish Church the tie between the Church and the schools would have remained unbroken far longer than it did ; but from the day on which the Church ceased to represent a majority of the people all claims to control the education of the whole country became untenable. First the University

<sup>1</sup> 35 and 36 Vict., c. 62. The Duke of Richmond, who was in a hurry to leave London for Goodwood races, had arranged privately with Lord Colonsay and the Duke of Argyll that the bill was to go smoothly through the House of Lords at one short sitting when it came back with the preamble changed. The Duke of Buccleuch, who had not been consulted, came in late, and expressed his surprise and annoyance that everything had been settled so rapidly ; but it was then too late to go back on what had been done.

<sup>2</sup> At the first elections under the Act there were only 599 contests for 972 boards.—*Return of School Boards elected under the Act of 1872: Parl. Papers, 1873* (412), lii. 617.

test went, then the test for schoolmasters, and at last the management of the parish schools. The Church acquiesced in the new order ; and the first General Assembly which met after the passing of the Act contented itself with a few words of dignified regret that the ancient system had been blotted out, and of hope that the new system would be equally beneficial.<sup>1</sup>

When the House of Commons met again on the 6th of February, 1873, it was doubtful whether the Ministers would be able to hold their own much longer ; and in little more than a month their principal measure, the Irish University Bill, to which a large section of their supporters was opposed, was rejected on the second reading by a majority of three. Mr. Gladstone resigned ; but Mr. Disraeli refused to take office, and the administration was reorganized, with Mr. Gladstone as Chancellor of the Exchequer as well as Prime Minister. But the great Liberal majority of 1868 was now a thing of shreds and patches, and, more fatal still, feeling in the country was rapidly veering round in favour of the Opposition.

Mr. Young had already (1870) brought in an entail bill ; and in the session of 1873 he returned to that branch of the law. That provision of the Rutherford Act which allowed the proprietor holding under a new entail, when he was twenty-one years of age, and had been born after the 1st of August, 1848, at his own hand and without obtaining consent from, or paying compensation to, any one, to disentail the estate and hold it in fee simple, came of course into effect in 1869. That other provision, by which the proprietor born before 1848 required the consent of his heir apparent, if twenty-five years of age, and born after 1848, before he could disentail, tied up estates till 1873. A period had, therefore, come when many disentailements might be expected. But the Rutherford Act had not forbidden new entails, and there was nothing to prevent a process of disentailement and re-entailement continuing for all time coming. Mr. Young's bill of 1873 made disentailement easier, by dispensing with

<sup>1</sup> *Acts of Assembly* (proceedings), May 23, 1873.



certain consents ; but its chief feature was a prohibition of new entails. He proposed to repeal the original statute of 1685, and to allow restrictions on the free use of land to a limited extent only. Another feature was a clause allowing the Court of Session to sanction the sale of an entailed estate without the consent of subsequent heirs, if the sale would be for the benefit of the heir in possession or the public.

This important measure reached the stage of a second reading, which was moved by the Lord Advocate at half past one on the morning of the 5th of May, after the Commons had been sitting for hours ; but, like so many Scottish bills, it was sacrificed to the exigencies of imperial business, and went no further. The session was even more sterile than usual so far as Scotland was concerned, though the Lord Advocate carried through a very useful bill, which set up a uniform standard of training for lawyers other than members of the bar, and abolished exclusive privileges of practising in particular courts.<sup>1</sup>

Though for a long time the by-elections in England had been going against the Government, and there was very little hope that it would last much longer, the dissolution of January, 1874, was a complete surprise, not only to the country but also to some of the Prime Minister's most intimate friends. The immediate cause, then quite unknown to the public, seems to have been that Mr. Cardwell at the War Office, and Mr. Goschen at the Admiralty, would not agree to certain reductions of expenditure which Mr. Gladstone demanded. The Government, it will be remembered, went to the country on finance. There was a surplus of £5,000,000 ; the income tax, which in the last five years had fallen from fivepence to threepence, was to be entirely abolished ; and there were to be large remissions in the taxation of articles of consumption. Every one knows what the answer of the country was—the return of a Conservative majority to the House of Commons for the first time since 1841. Even in Scotland the Conservatives made a gain of nine seats.<sup>2</sup>

<sup>1</sup> *Law Agents Act*, 36 & 37 Vict., c. 63.

<sup>2</sup> They gained N. Ayrshire, S. Ayrshire, Berwickshire, Midlothian, S.



Owing, it was believed, to resentment at his treatment of Mr. Henry Glassford Bell, Sheriff of Lanarkshire, over differences which had arisen between them, the Lord Advocate had fallen out of favour in the West of Scotland. The Orangemen, too, were very active against him in the Wigtown district, particularly at Stranraer, where they decorated the walls with placards in which the Ministers were described as "an ungodly crew" and a "national curse," and paraded the streets shouting "To hell with the Lord Advocate." Mr. Young lost his election by two votes, and the seat went to Mr. John Mark Stewart, afterwards Sir J. M. Mactaggart Stewart.<sup>1</sup> A scrutiny was demanded, and at the end of May the election judges gave the seat to Mr. Young by one vote. But he had already accepted a judgeship, and taken his seat in the court of session on the 3rd of March.<sup>2</sup>

As a judge Lord Young's powers were great ; but, as Lord Campbell had been in England, he was far too fond of taking the management of cases into his own hands, and interrupted counsel to such an extent that though his object was to save time he really wasted it. One day, when the late Mr. William Ellis Gloag (afterwards Lord Kincairney) was in a case before him, Lord Young went beyond all bounds ; and Mr. Gloag sat still after one witness had left the box without calling another. "Well, Mr. Gloag?" asked the judge. "Will your Lordship please to call your next witness," said the counsel! This was when he was sitting alone, as a judge of first instance. When he went to the Inner House, where he sat in the Second Division, it was the same. He was impatient both with counsel and with his colleagues. One advocate quoted as an authority that

Lanarkshire, Perthshire, Roxburghshire, Stirlingshire, the Wigtown and Ayr districts, and a seat in Glasgow, and lost Elgin and Nairn and Kirkcudbrightshire.

<sup>1</sup> "The greatest loss," said the *Scotsman*, "that Scotland has suffered herself, or has inflicted upon Parliament, is due to the Wigtown Burghs. They were represented by the strongest man Scotland sent to Parliament, and they have substituted for him one of the weakest men that could be found far or near."

<sup>2</sup> Succeeding Lord Cowan, who had resigned.

rather ancient treatise known as Balfour's Practicks. "Balfour's Practicks! Balfour's Fiddlesticks!" exclaimed Lord Young. On another occasion Lord Guthrie, then at the bar, opened a case with the words, "My Lords, my client is a Free Churchman," and Lord Young at once broke in with, "Well, he may be a very decent man for all that." To facilitate reference capital letters are inserted on the margin of documents printed for use in Court. "Where are you reading now?" Lord Young asked a counsel one day. "I'm at C my Lord," was the reply. "I thought so," said his Lordship.

Nor did he spare his colleagues. He was once on circuit at Glasgow with Lord Deas when the clergyman made an unusually long prayer at the opening of the court. "Very long prayer that fellow gave us," said Lord Young in the evening, "I suppose when Deas goes on circuit, they think it right to call the Almighty's attention to the fact." In a case heard before the Second Division one of the litigants was named Macdonald. "I thought," Lord Young remarked, "that there were no Macdonalds outside Skye." "You will find them all over the world," said the presiding judge, Lord Justice Clerk Macdonald (Lord Kingsburgh). "Yes, and sometimes in the most unexpected places," Lord Young retorted.

But the stories about him are endless, and most of them so well known that they need not be repeated. He never dealt in pondered witticisms or carefully prepared impromptus. All his sharp sayings were uttered on the spur of the moment; and if he was sometimes too personal, even to rudeness, it was probably because a feeling that he was in a position below that which he was capable of filling made him irritable. However, he was to rise no higher. He was by nature, it was said after his death, "so strenuous, not to say ruthless, in his dealings with all sorts and conditions of men, that it might have been predicted, when he abandoned politics for the judicial bench, that he would not climb more than one of the rungs of the ladder of promotion that faces a 'Lord

Ordinary' on his appointment." Some consolation he certainly had in the fact that, though he was frequently in a minority in the Second Division, the House of Lords was often found to agree with him if there was an appeal.

He kept his place on the bench for thirty-one years. In 1905 his health failed. He was unable for some weeks to attend the court ; and in April he resigned, being then in his eighty-seventh year.

Lord Young, who had married, in 1847, Miss Janet Graham Bell, daughter of George Graham Bell of Crurie in Dumfriesshire, and had a large family, lived during the greater part of the year in Scotland. But his journeys to London were frequent ; and when there he made a point of dining at the high table of the Middle Temple, of which he was one of the oldest benchers. During one of these visits he was attacked by faintness while walking in the Temple grounds, fell, and injured himself. This brought on an illness which lasted a few days, and of which he died in London on the evening of Tuesday the 21st of May, 1907, almost the last survivor of the counsel who had practised at the bar of Scotland in the early years of Queen Victoria.

## CHAPTER VIII

EDWARD STRATHEARN GORDON

WILLIAM WATSON

IN February, 1874, when the Conservatives, after being continuously in a minority of the House of Commons for nearly thirty years, at last found themselves in power as well as office, Mr. Gordon, now in his sixtieth year, was appointed to the Lord Advocateship, which he had previously held for some time after the elevation of Mr. Patton to the bench.<sup>1</sup>

Edward Strathearn Gordon was born at Inverness on the 10th of April, 1814. His father was Major John Gordon of the second (Queen's) regiment, the eldest of four soldier sons of Adam Gordon of Griamochary, Kildonan, Sutherlandshire. His mother was Katharine Janet Smith of Kinmylies near Inverness. Young Gordon was sent by his parents to the Royal Academy at Inverness, and thence to the University of Edinburgh, where he matriculated at the age of fourteen, and went through the usual courses in arts and law. In 1835 he joined the Scottish bar, side by side with his lifelong friend John Inglis, the future Lord President, and apparently was fairly well employed as a junior from the first. Official promotion might have come his way sooner than it did but for the chances of party warfare, which threw everything into the hands of the Whigs for so many years. He was, however, an advocate depute under Mr. Inglis; and in 1858 he was appointed Sheriff of Perthshire.

He had mounted steadily into a considerable practice, and, though not a rival of Mr. Moncreiff, Mr. Young, and other

<sup>1</sup> *Supra*, p. 240.



men who were at the very top of the bar at that time, was a sound lawyer, and a most judicious pleader. One of his most important cases was when he was senior counsel for Major Yelverton in the romantic lawsuit which occupied the Scottish and Irish Courts for several years, and was at last decided, in favour of Major Yelverton, afterwards the fourth Viscount Avonmore, by the House of Lords in 1864.

In July, 1866, Mr. Gordon was appointed Solicitor-General for Scotland in the Derby-Disraeli administration; and in February of next year he succeeded Mr. Patton as Lord Advocate. He had not yet found a constituency; and early in the session of 1867 this led to questions and a debate in the House of Commons on the subject of Scottish administration.<sup>1</sup> In his absence the Scottish Reform Bill of that year was brought in by the Chancellor of the Exchequer (Disraeli), Mr. Gathorne Hardy, and Sir James Fergusson on the 13th of May.<sup>2</sup> But it was decided that no further progress was to be attempted till after the English bill was through Committee; and on the 29th of July, a question having been asked about the intention of the Government, Mr. Disraeli replied: "It is not the intention of the Government to proceed with the Scottish Reform Bill this evening or any other evening this session."

Parliament rose on the 21st of August; and two months later the Conservatives of Scotland were eagerly awaiting the speech which Mr. Disraeli was to make at Edinburgh. Within less than twelve months an unexpected change had come over the party. Lord Grey's Reform Act had brought about far greater alterations in Scottish than in English politics. The ruin of the Conservative party in Scotland had been complete owing to the height from which it fell. Nothing could have been more discouraging than its condition for many years; and when, on the death of Lord Palmerston, Parliamentary reform became once again a practical question the opinions held by the Conservatives on almost every topic were more unpopular than ever, because of their resistance to all proposals for extending

<sup>1</sup> *Supra*, p. 240. <sup>2</sup> *Hansard*, clviii, ix, 399.

the franchise. In the summer of 1866, they spoke and wrote against any change. But the genius of Mr. Disraeli triumphed; and those who in 1866 were protesting against even an instalment of reform found themselves, in 1867, applauding the introduction of household suffrage in the towns.

Many old-fashioned people, indeed, saw this sudden change of front with unconcealed annoyance, and agreed with Lord Cranborne and his friends in condemning it. But the younger Conservatives, fascinated by the strange personality of Mr. Disraeli, who had fought his way up with such invincible courage, began to realize that, the old order of things having passed away for ever, they must abandon the traditions of their party on the question of the franchise, and to hope that, by adopting new methods, they might regain their influence in Scotland. Lord Macaulay has described how, when the popularity of Byron was at its height, his admirers not only learned his poetry by heart, but did their best to write like him and look like him, and speaks of the "hopeful undergraduates and medical students who became things of dark imaginings." Something like this took place among the young politicians in the Parliament House. They began to study *Sybil*, to speak mysteriously of a great Tory Democracy, and sometimes to adopt the tones and gestures of Mr. Disraeli, whilst traces of his phraseology might be noticed in their speeches.

And now the magician who had brought all this about went down to Midlothian. He left London on the morning of Saturday, the 26th of October, 1867, with Mrs. Disraeli, and arrived in the evening at Arniston, where he was the guest of Mr. Robert Dundas in the old oak room round which Henry Dundas used to romp in his boyhood, where Sir Walter Scott "drank many a merry bottle," and where the captains of the old guard had so often sat in council of war during the last stand against the Reform Bill of 1832.

In October, 1832, Mr. Disraeli had told the electors of Chipping Wycombe that he was "a Conservative to pre-

serve all that is good in our constitution, a Radical to remove all that is bad," and called on the people of England to "unite in forming a great national party which alone can save the country from impending disaster." He now struck the same note at the banquet in the Corn Exchange at Edinburgh. It was a remarkable gathering. Sir William Stirling Maxwell was in the chair. The vice-chairman was Mr. Nisbet Hamilton, who had been the last Tory Member for Edinburgh.<sup>1</sup> The Duke of Buccleuch, who in 1832 had so vehemently resisted even the measure of Lord Grey, was there, with a brilliant company who heard their versatile leader, whose appropriate motto, *forti nihil difficile*, was displayed upon the walls, tell the country how he had educated them on the question of reform. The great man was on his legs for two hours and a half, while delivering this extraordinary oration, in the course of which some young advocates observed with interest and approval that he consumed one whole decanter of brown sherry.<sup>2</sup>

After this memorable meeting the Disraelis remained in Edinburgh till Friday, the 1st of December, as the guests of the Lord Advocate, attended various functions, and were taken by their host to see Holyrood, the Castle, the Parliament House, and other public places. The freedom of the city was presented to Mr. Disraeli, the statesman who had put the future of the country in the hands of the working-classes, in company with Mr. Robert Lowe, who had so resolutely opposed any lowering whatever of the franchise; and the Lord Advocate presided at a meeting in the Music Hall, where addresses from the "Conservative working men" were presented to Mr. Disraeli. A dinner party at Mr. Gordon's home brought this interesting visit to a close; and next morning the Disraelis left Scotland.

"During a four days' visit to Edinburgh in 1867," we read in the biography of Dr. Charteris, "Mr. Disraeli had been Mr. Gordon's guest, and had learned to trust his judgment. By a curious coincidence Mr. Gordon, when a lad

<sup>1</sup> *Supra*, p. 206, note 5.

<sup>2</sup> Mr. Gordon proposed "The Agricultural, Commercial, and Manufacturing Interests of the Country," but without making a speech.

of eighteen, had heard Francis Jeffrey, the Lord Advocate of the day, introduce the first Scottish Reform Bill in 1832 ; and he himself first opened his mouth in Parliament, by Mr. Disraeli's invitation, to introduce the second Scottish Reform Bill in 1868." <sup>1</sup> But to fulfil this duty it was necessary that the Lord Advocate should be in Parliament ; and at the beginning of December he found a seat in the Norfolkshire borough of Thetford. This small constituency returned two Members ; but the few electors were seldom put to the trouble of going to the polling booth. There had only been two contested elections since 1832 ; and the custom of the place was to return a Conservative and a Liberal, the Grafton family putting up the Earl of Euston or some other Liberal and the Ashburton family a Baring. In the winter of 1867 the Hon. Alexander Baring, afterwards the fourth Lord Ashburton, retired ; and it was arranged that the Lord Advocate should have the seat. He went to Norfolkshire, and on the 18th of November, in the guildhall at Thetford, " in a long and eloquent speech gave his opinions upon general politics, all of which were of a strong Conservative nature." <sup>2</sup> Lord Frederic Fitzroy, the Duke of Grafton's brother, came into the field against him, but retired ; and on the 2nd of December, Mr. Gordon was declared duly elected. Next evening he went to the House of Commons, and took his seat ; but four days later the short autumn session of that year finished, and there was an adjournment till the 13th of February (1868), when Parliament again met, with Mr. Disraeli at last Prime Minister and Mr. Gladstone leader of the Opposition.

The Reform Bill for Scotland was brought in (February 17) by Mr. Gordon, who then spoke for the first time in the House of Commons.<sup>3</sup> The second reading was taken on the 9th of March. But within a week Mr. Gladstone gave the signal for his attack on the Church of Ireland ; and for the rest of the session the Scottish Members had to

<sup>1</sup> *The Life of Archibald Hamilton Charteris, D.D.* By the Rev. the Hon. Arthur Gordon, p. 229.

<sup>2</sup> *Norfolk Herald*, November 20, 1867.

<sup>3</sup> *Hansard*, cxc. 811.



fight for any spare time they could obtain. The resolutions for the disestablishment of the Irish Church engrossed the attention of Parliament ; and though the Scottish Reform Bill was a Government measure in charge of the Lord Advocate, it was pushed aside to make way for other Ministerial business and for the Irish Church resolutions moved by the leader of the Opposition. In the midst of all this came the resignation of Mr. Disraeli when the first resolution was carried, the hints of a dissolution, and his return to office. But the Reform Bill for Scotland could not be allowed to drop ; and after many delays, loud complaints by the Scottish Members, and several defeats of the Government in Committee, it was at last carried through all its stages, and passed by the House of Lords in July.

Before the general election of November, 1868, Thetford had gone the way of the Eatanswills, Lansmeres, and Yattons, which had been spared in 1832 ; and, as we have seen, Mr. Gordon stood for the Universities of Glasgow and Aberdeen, but just failed to secure his election.<sup>1</sup>

The change of Government which followed the general election sent him back to his practice at the bar ; and he remained without a seat till the autumn of 1869, when Mr. Moncreiff became Lord Justice Clerk. He then stood once more for the Universities, which he carried by the large majority of 504 against Mr. Alexander Smith of Jordanhill. At the same time he succeeded Mr. Moncreiff as Dean of the Faculty of Advocates.

During his political career Mr. Gordon was a prominent leader in a movement which has left a deep mark on the history of Scotland.

For some time Church questions had once more been coming to the front. The growth of the Free Church had been remarkable during the years which followed the disruption. Its churches and manses had spread all over the country. It maintained colleges of its own in Scotland, and a complete system of foreign missions in India and other parts of the world. In Edinburgh its

<sup>1</sup> *Supra*, p. 244.

General Assembly met in a spacious hall which had been erected close to the spot where stood, according to tradition, the palace of Mary of Guise ; and there the business of the Church was conducted with forms and ceremonies which had been handed down from the days of Knox. An income which gradually rose till it reached the large sum of £500,000 a year, derived wholly from voluntary contributions, proved that the financial schemes of Chalmers had been sound.

And at the same time the Established Church had been recovering from the blow which it received in 1843. A new school had arisen. Men of wide sympathies and tireless energy, Norman Macleod, Tulloch, Lee, Charteris, Macgregor, and others, were taking the place of the old Moderate party, and quickening the religious life of the community. The ashes of the disruption fires were turning cold. Free Churchmen had ceased to speak as if they alone were Christians ; and Churchmen had come to see that, apart from the legal rights and wrongs of the dispute, the men who followed Chalmers had gone after him for conscience' sake. The press, which had never been friendly to the Free Churchmen, now spoke of the disruption as a noble sacrifice, which ought to dispel any doubt as to the purity of their motives.

It was known that an answer to the protest of the Free Churchmen of 1843 had been prepared ; but it had never been made public, and the world at large began to doubt whether the protest was answerable.<sup>1</sup> Soon after the disruption, moreover, it had become known that Sir Robert Peel had been misled as to the state of feeling in Scotland ; that Lord John Russell had been assured that only a few turbulent and hot-headed men would go with Chalmers ; and that there was reason to believe that Lord Brougham and Lord Cottenham had not studied the Auchterarder case fully when it came before them, and had thought, when they gave their decision, that they were dealing with a question of merely passing interest. Lord Aberdeen and

<sup>1</sup> Some light is thrown on the reasons why the answer to the Free Church protest was suppressed in a letter, written in August, 1843, by Mr. David Milne-Home, advocate depute, to Lord Advocate McNeill, and published in the *Biographical Sketch of David Milne-Home, LL.D.*, p. 174.

Sir James Graham had expressed their remorse for the course they had taken ; and Sir James Graham had gone so far as to say that he would never cease to regard it as "the saddest event of his life that he should ever have had any hand in that most fatal act."<sup>1</sup>

While there were still some who cherished unabated antagonism to the Free Church, many, even of those who were convinced that Chalmers and his party had been altogether wrong in point of law, ardently desired to see the Church of Scotland become more truly national by means of an union with those who had seceded. Mr. Gordon was a strong Churchman ; but he was most anxious to effect a reconciliation with the heirs of Chalmers, for whom he had a profound admiration. "I was one of those," he said in 1870, "who saw with great pain the disruption of our Church in 1843. I was then a young man, not entitled to take a lead in those matters ; but from that time forward I have ever looked with great interest for the time arriving when there might be a reasonable expectation of some proposition being made with a view to reunion with our brethren who had left us. I will candidly admit that it is a matter which lies very near my heart. In fact, it is one of the great inducements which I have to remain in public life." But it was evident that if there was to be a reconstruction of the Church the first step must be the abolition of patronage. Without that nothing could be done.

Since 1843 patronage had been exercised under Lord Aberdeen's Benefices Act.<sup>2</sup> When it was passed Lord

<sup>1</sup> *Robert Buchanan ; an Ecclesiastical Biography*, p. 208. Commenting on this, and on a statement to the same effect in Mr. McCullagh Torrens' *Life of Sir James Graham*, ii. 232, Mr. C. S. Parker says, "that he ever held such language is in itself improbable ; in his private papers there is no trace of it ; not was it suspected by his family or friends" (Parker's *Sir James Graham*, i. 395). But if Dr. Buchanan's positive statement, put on paper within a few days after his interview with Sir James Graham, is not conclusive, Mr. Murray Dunlop, speaking at Carlisle in September, 1862, mentioned that Sir James Graham said to him, "in a very earnest tone and manner, 'I have never ceased to deplore the part I took in your Scotch Church affair'" (*Memoirs of Guthrie*, ii. 66). And, again, almost exactly the same thing was said by Sir James to Mr. Adam Black some years after the disruption (*Memoirs of Adam Black*, p. 125). <sup>2</sup> *Supra*, pp. 129-131.



Campbell said that all it did was to give every congregation in Scotland the right to grumble. As time went on the General Assembly began to grumble too, and motions for some change in the law were made. In 1860 a proposal that the Church should apply to Parliament for an Act "to explain the powers of the people in the settlement of their ministers" was lost. The same thing happened in the following year; but a committee was appointed to consider the question. Next year things went so far that a resolution for the repeal of the Act was brought forward. It was rejected; but the dissatisfaction with the state of things under the Aberdeen Act grew; the majorities against changing the law diminished; and at last in 1869 a resolution against the law of patronage was carried, and a petition to Parliament praying for its abolition was adopted.<sup>1</sup>

Soon after this (June, 1869) a deputation, led by Dr. Norman Macleod, explained to Mr. Gladstone that the Church of Scotland now wished patronage to be abolished, and were asked whether any of those who had left the Church on account of patronage had been consulted. The reply was to the effect that the abolition of patronage had been regarded as a matter which concerned the Church alone. Mr. Gladstone then said that it might appear to some "that the ecclesiastical property should be made over to those who bore earlier testimony to the principle of anti-patronage, namely the Free Church in 1843, and the various seceders now forming the United Presbyterian Church." This raised a point with which the deputation had no authority to deal, though some of both the laity and the clergy of the Established Church had wished the Free Church to be consulted.

The question was now before the country; and every Member of Parliament in Scotland had to face it. Not all of them were so adroit as Lord Advocate Young, who, after a speech at Stranraer, was asked what action he would take if Mr. Gordon brought in a bill to abolish patronage. "I can have no difficulty as to that," he replied. "My first action will be to read the bill."

<sup>1</sup> *Acts of Assembly*, May 26, 28, 1869.



Soon after this very characteristic reply there was a meeting in Edinburgh (December 28, 1870), at which Mr. Charles Dalrymple, the Conservative Member for Buteshire, moved a resolution in favour of abolishing patronage, which was seconded by Mr. Gordon. Mr. Gordon's great wish was to unite the Established and Free Churches ; and to accomplish this was now the chief object of his public life. Opinion in the Established Church had altered completely since the disruption. The memorial to the Government which Mr. Inglis drew up <sup>1</sup> had said that the abolition of patronage would be the ruin of the Church. In the General Assembly of 1870 it was said that if patronage was not abolished the Church would die of inanition. There were debates in Parliament. In the House of Lords one of the first speeches made by Lord Rosebery was on this topic.<sup>2</sup> Sir Robert Anstruther, the Member for Fifeshire, a Liberal Churchman, took it up in the House of Commons. The demand for some action by the Government grew louder ; and in 1873 Sir Robert Anstruther moved for an official inquiry.<sup>3</sup> Mr. Gordon seconded this motion ; but opposition, led by Mr. Duncan McLaren, came from the Radicals, who feared that the abolition of patronage would strengthen the Church, and the motion was withdrawn after Mr. Gladstone had suggested that a committee might be appointed to consider the question.<sup>4</sup>

Meanwhile since the year 1863 the Free Church and the "United Presbyterians" had been negotiating with the view of uniting. What had kept these two great communities apart was the question of the recognition of religion by the State. Put broadly, the Free Church held the "es-

<sup>1</sup> *Supra*, p. 204.      <sup>2</sup> *Hansard*, ccvi. 454 (May 9, 1871).

<sup>3</sup> He moved : "That, whereas the presentation of ministers to churches in Scotland by patrons under the existing law has been the cause of much division among the people and in the Church of Scotland, it is expedient that Her Majesty's Government should take the whole subject into consideration, with a view of legislating as to the appointment and settlement of ministers in the Church of Scotland."—*Hansard*, ccxvi. 1090.

<sup>4</sup> It appears from a passage in the *Life of Dr. Charteris*, p. 225, that Lord Advocate Young, under instructions from Mr. Gladstone's Government, actually prepared a bill dealing with the question ; but nothing came of it.

tablishment principle," while the United Presbyterians held the "voluntary principle." For a short time the course of the negotiations had been smooth; but the discussions proved that there were two parties in the Free Church. The supporters of the union, who were in a large majority, maintained that, seeing the two Churches had so much in common, there was nothing in the voluntary principle, which might be left an open question, to prevent the union. Those who opposed the union accused the majority of deserting the original principles of the Free Church; and feeling became so exasperated that at last it was evident that the minority were prepared for another disruption rather than consent to the union. It was, moreover, very doubtful to which of the two parties the property of the Free Church would belong if the majority insisted on accomplishing the union; and counsel were consulted on this very important question.<sup>1</sup> When it was seen that the two sides were so sharply divided that no union was possible except at the cost of breaking up the Free Church the negotiations were formally abandoned.<sup>2</sup>

Such was the situation in 1874, when the Liberal Government went out, and Mr. Gordon, who had been returned by his University constituents without a contest, was appointed Lord Advocate for the second time.<sup>3</sup> Dr. Begg and his party had carried their point; and in the meantime the Free Churchmen were living in outward harmony with each other. But nearly ten years of recrimination and wrangling had left their traces. The Church of Chalmers could never again be the same as in the radiant May of 1843. There was reason to believe that, if patronage was

<sup>1</sup> Dr. Begg, the leader of the minority, consulted Mr. Gordon, Mr. J. B. Balfour (afterwards Lord President), Mr. John Millar (Solicitor-General, 1867-68; 1874) and Mr. Rutherford Clark (Solicitor-General at that time), and obtained an opinion in his favour. Mr. Rutherford Clark and Mr. Balfour also advised the other side; and it may be presumed (though no written opinion was given) that the risk of their losing the property was pointed out.

<sup>2</sup> *Acts of Free Church Assembly*, May 29, 30, 1873.

<sup>3</sup> Mr. Gordon, who now resigned the Deanship on the ground that the offices of Lord Advocate and Dean of Faculty should never be in the same hands, was sworn of the Privy Council on March 14, 1874.

abolished, the Established Church might be strengthened by the adhesion of some who had been members of the victorious minority in the recent conflict. In any case, and this was what seemed more important in the eyes of Mr. Gordon, no reunion of the Presbyterians of Scotland was possible till the ancient grievance was removed; and when the new Parliament met in March (1874) a measure for this purpose was in preparation.

The bill to "amend and alter the law relating to the appointment of ministers to parishes in Scotland," of which Lord Advocate Gordon was the author, was brought into the House of Lords by the Duke of Richmond on the 18th of May, 1874. It repealed both the Patronage Act of Queen Anne, the original source of trouble, and Lord Aberdeen's Act, and gave the power of electing the ministers to the communicants, the patrons receiving compensation for losing their rights of presentation. A clause declaring the spiritual independence of the Church had been prepared by the Lord Advocate and discussed by the Cabinet. All the Ministers except Lord Cairns, whose Low Church opinions it offended, had been willing to include it in the bill, if it could be made absolutely certain that the Free Churchmen would accept it as satisfying their claims. But this was found to be impossible; and the measure was adjusted without this clause. Another clause was, however, added, declaring, in general terms, the exclusive jurisdiction of the Church in all matters relating to the settlement of ministers.<sup>1</sup> This important provision was in the third clause of the bill.

The proposal to abolish patronage was welcomed by the Duke of Argyll, Lord Rosebery, and most of the peers, condemned only by a few, who said they were sorry that the

<sup>1</sup> "Provided always that, with respect to the admission and settlement of ministers appointed in terms of this Act, nothing herein contained shall affect or prejudice the right of the said Church in the exercise of its undoubted powers to try the qualifications of persons appointed to vacant parishes; and the courts of the said Church are hereby declared to have the right to decide finally and conclusively upon the appointment, admission, and settlement in any church and parish of any person as minister thereof."—37 & 38 Vict. c. 82 s. 3.



first measure proposed in the House of Lords by the new Conservative Government should be "a serious inroad on the rights of property," and sent down to the Commons unchanged.

At the end of May the bill was discussed at great length by the two General Assemblies. In the Assembly of the Established Church it was suggested that Parliament should be asked to amend the third clause, by adding words which would enlarge the powers of the Church, on the ground that this might "dispose towards the Church of Scotland the hearts of those in other communions, who had endured great sacrifices for which they would be revered for generations to come." But this proposal was rejected. The bill, it was said, was a bill dealing only with patronage and the settlement of ministers, and there was a danger "of raising up in the minds of the English Parliament the whole question of spiritual independence which was raised in 1843, and of creating the impression that the Church of Scotland was again raising the same standard." The Assembly agreed to petition both Houses of Parliament in favour of the bill; and a vote of thanks was given to the Lord Advocate "for the valuable services he has rendered to the Church and the country in the promotion of this measure."<sup>1</sup>

In the Free Church there was a division of opinion. The party which had opposed the union wished to appoint a committee "to watch over the whole subject during the current year," and take steps to bring the principles and claims of the Free Church before Parliament and the country. But the majority carried a resolution which declared that no Act to alter the law of patronage "can have the effect of removing the grounds of separation recorded in the protest read before Her Majesty's commissioner on the 18th of May, 1843." They further protested against legislation, professedly in the interests of Scotland generally, which proceeded on the application of one Church alone, without inquiry into the wishes of the people as a whole.

<sup>1</sup> *Acts of Assembly* (Proceedings) May, 29, 30, 1874.



This resolution was carried at a morning sitting. On the evening of the same day another resolution declaring that the maintenance of the Established Church was an injustice, and in favour of disestablishment, was carried on the motion of Dr. Rainy, whose fate it was, during the next thirty years, to lead the Free Church on to that overwhelming calamity, the full effects of which were averted only by the wisdom of Parliament and the public spirit of a few Scottish and English statesmen.<sup>1</sup>

It was thus apparent that the bill would not heal the breach of 1843, but might even make it wider. Just before the disruption of 1843 Dr. Chalmers had said, "A mere Non-intrusion measure will not satisfy us. The abolition of patronage itself will not satisfy us." This was still the position of the Free Church after thirty years; and the leaders persuaded themselves that the object of the bill was not really to unite the Churches, but to weaken the Free Church. And, indeed, there was some reason for this suspicion. When Dr. Norman Macleod had his interview with Mr. Gladstone in 1869<sup>2</sup> he said that one object of the movement against patronage was to conciliate the Free Church. But from that time till the bill was brought into the House of Lords the Free Church had been ignored. And not only so; but a proposal to consult the Free Church before going to Parliament had been discussed and most unwisely rejected by those who were acting on behalf of the Established Church.

This was before the Liberal Government went out of office; and Mr. Gladstone had been watching the progress of events. He had now the full confidence of a majority of the Free Churchmen, who had long since forgiven him for voting against an inquiry into the claims of the Scottish Church in 1843.<sup>3</sup> They sounded him as to his opinion of the new departure. "It raises," he said, "the whole question of Church and State. They

<sup>1</sup> *Acts of Free Church Assembly*, May 29, 1874. The motion for disestablishment was carried by a majority of 298 to 98.

<sup>2</sup> *Supra*, p. 297.

<sup>3</sup> *Supra*, p. 92.

come for a new charter ; and the proposed arrangement is a monstrous injustice. If the Free Church acquiesces in that, it will acquiesce in anything.”<sup>1</sup>

Soon after the patronage bill was introduced Dr. Rainy was in correspondence with Mr. Gladstone, and said that the third clause<sup>2</sup> was meant to assure the Free Church that the difficulty as to jurisdiction was removed as well as patronage. But the language, he thought, was vague. If the Established Church was to have an independent jurisdiction, of course the Free Church approved ; but let it be made perfectly clear. “We do not,” he explained, “question the good intentions of Mr. Gordon, who is no doubt the architect of the measure. I feel quite sure that all his motives are creditable. But Mr. Gordon’s mind is precisely of the order which is disposed to get round difficulties of principle by phrases which turn out deceptive, however little he may mean to deceive.”<sup>3</sup>

This was itself rather vague language ; but the object of the letter was of course to enlist the services of Mr. Gladstone. He had not yet formally resigned the leadership of the Opposition ; but it was uncertain whether he would take part in the discussions. When, however, the Lord Advocate moved the second reading (July 6) he was in his place, and seconded Mr. W. E. Baxter’s motion : “that this House considers it inexpedient to legislate on the subject of patronage without further inquiry and information.”

Mr. Gladstone said that he would make a large concession to the Lord Advocate, and say that from the point of view of the Established Church it was impossible to object to his efforts to get rid of patronage. But, he went on, “what I contend is that the nonconformists in Scotland are entitled to be considered in this matter. The learned Lord has framed his bill from a point of view which is that of the Established Church. He says his intention is to strengthen the Church. But how ? Why, by weakening the other

<sup>1</sup> This was at an interview (April 17, 1872) with Mr. Taylor Innes, who was acting on behalf of Dr. Rainy.

<sup>2</sup> *Supra*, p. 300, note.

<sup>3</sup> *Life of Dr. Rainy*, i. 271.

religious bodies. He invests the present Established Church with such command over wealth, and, at the same time, such unexampled, if not unbounded, liberty with respect to the interference of the civil courts, that when you have conferred these high privileges on the laymen of the Established Church, the laymen of the Free and United Presbyterian Churches will be tempted to come back into the Established Church, and to leave their ministers to look out for themselves, or to starve."

Was this wise? he asked. Did the Free Church, after 1843, move for disestablishment? The answer was to be found in the annals of Scotland during the last thirty years. Why, then, throw down a challenge to the nonconformists? "The bill now before the House amounts to a cry of *Peccavi*, but if it is also an admission of wrong and a confession of penitence, let me say that restitution is an indispensable means of testing sincerity. What are you going to do for those people whom you drove out of the Established Church, and compelled to find ministers for themselves, to build churches, manses, and schools, and, in fact, to organize and pay for the establishment of a complete system of Church Government? You compelled them to do all this, and now you say you are going to adopt the principles for which you drove them away."

He then proceeded to say that if the Established Church would open a negotiation for union with the nonconformists, he would assist it, but the patronage bill was neither fair nor generous. "But I do not think that the dissenting bodies in Scotland will be content to suffer injustice at the hands of the learned Lord Advocate." There had scarcely been any movement for disestablishment in Scotland till the bill was introduced. But now "these men have met in their Assembly and by a very large majority, for the first time in their history, declared in favour of disestablishment."

This speech persuaded the leaders of the Free Church that when the Liberal party returned to power the Church of Scotland would, in all probability, share the fate of the Church of Ireland. But it had no effect on the division.



The second reading, for which a majority of the Scottish Members voted, was carried on the 13th of July.<sup>1</sup> Three weeks later the Commons passed the bill with a few amendments; and patronage was at last abolished in the Church of Scotland. There was, however, a feeling in England as well as Scotland that it might have been wise to take the nonconformists into council.<sup>2</sup>

The disestablishment agitation of the next few years owed much of its vitality to a belief, which never had any sound foundation, that it had been decided in the councils of the Liberal leaders to deal with the question whenever they came back to power. Mr. Gladstone's speech seemed to show that he was ready to move; and in the *Reminiscences* of Mr. Taylor Innes an incident is recorded which proves in what direction his mind had been turning for some time.

In 1872 the Free Church had resolved that if any great question of Church and State in Scotland was settled in favour of the Established Church alone, the Free Church would then consider that the question of disestablishment was raised. In the following year, when the Established Church had decided to move for the abolition of patronage, Mr. Innes called on Mr. Gladstone. " 'Is Scotland now ready for disestablishment?' were, Mr. Innes says, 'almost the first words he said as I entered his room. I hesitated, and he rapidly and scornfully ran over a dozen of considerations, all tending to show that this was the only honourable result for the Scottish Church or people.' " Mr. Innes told him that he thought no section of the Scottish people

<sup>1</sup> By a majority of 198. Two Free Churchmen were in the majority, Mr. James Yeaman, M.P. for Dundee, and Mr. W. D. Fordyce, M.P. for East Aberdeenshire. The most important change from the original form of the bill was that the right of election was vested in the congregation (instead of the communicants), subject to regulations to be framed by the General Assembly.

<sup>2</sup> *The Times* had a leading article (July 7, 1874) which suggested that the Free Churchmen in each parish might be allowed a voice in the selection of the clergyman. "If," it said, "something of this sort cannot be done, it is difficult to see how the Established Church can fail to become more and more a narrow sect; and thus, by embittering the existing antagonisms between the various Churches, the bill might lead to ulterior consequences little desired by its authors."



was prepared for sudden action. "Long before I was done speaking, he was pacing through the room—flashing eye, white cheek, and tightly compressed lips, all testifying to the pent-up storm within." Mr. Innes, however, stood his ground, and spoke of "a longer time of preparation." Mr. Gladstone made no answer. "He walked three times across the room, and, suddenly turning, addressed me on another subject altogether!"

This strange conversation was reported to the Free Church leader, who evidently was chagrined that Mr. Gladstone's enthusiasm had not been encouraged; and there can be no doubt that when the Free Church leaders embarked on their long crusade, they always believed that they could rely on the support of Mr. Gladstone. Party feeling, they seemed to think, would induce the Liberal Churchmen to follow him. It was in perfect confidence of this that at the beginning of December, 1874, a few months after the abolition of patronage, Dr. Rainy made a speech in which he declared that without disestablishment there could never be any reunion of the Churches, and so launched Scotland on another of her many ecclesiastical controversies.

Lord Advocate Gordon remained in office till 1876, and accomplished a great deal of useful work with the help of a most admirable secretary, Mr. James Badenoch Nicolson of Glenbervie, who took endless pains to lighten the burden which told heavily on his chief, whose strength was failing. In that year (1876) the Appellate Jurisdiction Act was passed. It was understood that the heads of the two Divisions of the Court of Session were to have the first offer of a Scottish Lordship of Appeal; and Lord President Inglis and Lord Justice Clerk Moncreiff were asked in turn if they would accept this promotion. They both declined; and Lord Advocate Gordon was then appointed, received a life peerage, and took his seat in the House of Lords as Baron Gordon of Drumearn.

He lived to occupy his new position only till the end of the session of 1879. He was suffering from heart disease,

and was medically advised, on the 29th of July, to visit Homburg for his health ; but he was taken ill at Brussels, where he died three weeks later (August 21, 1879).

Lord Gordon married, in 1845, Agnes, only child of John MacInnes of Auchenreoch in Stirlingshire, and had a family of five sons and three daughters. It was well that his wife had an ample fortune ; for he sacrificed his practice at the bar when he became Lord Advocate and entered the House of Commons, where his quiet commonsense and tact helped him to gain the confidence of the Members from Scotland, to suit whom he initiated the " Tea Room Meetings," where he used to consult them, supporters and opponents alike, on Scottish business. He had also the full confidence of Mr. Disraeli, with whom he was on terms of personal friendship.

His public services were recognized by the Universities of Edinburgh and Glasgow, from both of which he received the degree of LL.D—at Glasgow along with Mr. Disraeli in 1873, when the Conservative leader, who had been elected as rector, gave his inaugural address.

During his terms of office important Acts relating to Scotland, notably a Court of Session Act and a Titles to Land Consolidation Act, were placed on the statute book ; but it is as the author of the Act abolishing patronage that he holds a place among the Lord Advocates who have left their mark on Scottish history. Whatever the evils of popular election may be, the evils of patronage were greater. Lord Aberdeen's Act was almost unworkable ; and it was sound policy, in the interests of the Church, to which it was becoming a source of weakness, to repeal it. A hope of weakening the Free Church may have influenced some of those who took part in the movement for the abolition of patronage ; but it is certain that Lord Gordon's personal aim was to prepare the way for a reunion of the Scottish Churches. That could never take place so long as the people of Scotland were not free to choose their parish ministers. Time alone, however, can show whether the concession of 1874 was not made too late.

No important statute, nor the leadership of any great cause, is connected with the name of the Lord Advocate who came after Mr. Gordon in 1876.

Among the counsel who frequented the Parliament House in the fifties there was one on whom fortune seemed to frown persistently. Day after day, from the meeting of the courts at nine in the morning, till it was time to take off his wig and gown, he walked the well-worn floor, looked at the paintings and marble statues of departed Deans, and Presidents, and Lord Advocates, warmed himself in winter at the huge fireplace, read law—not very much by all accounts—did a little reporting, saw men younger than himself hurry away to the courts where Lord President McNeill and Lord Justice Clerk Hope were sitting in judgment, and sauntered in to hear them plead. But no bundles of papers and no fees came his way.

This neglected advocate, whose name was William Watson, was born, on the 29th of August, 1827, in the country manse of Covington and Thankerton, a small parish on the banks of the Clyde in Lanarkshire, where his father was minister with a modest stipend of some two hundred pounds a year. He joined the bar, from the Universities of Glasgow and Edinburgh, in 1851; and about ten years of dreary waiting for employment followed.

Clydesdale, from which he came, breeds a sturdy race; and Mr. William Watson was one of the sturdiest, both in mind and body. But it appeared as if he would never have an opportunity of showing his powers. His modesty was such that he kept always in the background; and it was said, in later years, that the time hung so heavy on his hands that he spent many solitary hours in the curious employment of arranging the loose sheets of music in the Advocates' Library. His father was a member of the General Assembly of 1858; and in that year young Mr. Watson was retained as junior counsel in one case, with Mr. George Pattison, a very rough and ready stamp of man, as his leader.<sup>1</sup> Their client, a country minister accused

<sup>1</sup> Mr. Pattison, who had been at the bar since 1834, was examined as a



of serious offences, was deposed, and his parish declared vacant.

This was one of his few cases ; and as time went on, men of his own standing, and others who had come to the bar long after him, left him behind. Mr. Rutherford Clark, only two years his senior, was in full practice. Mr. Adam Gifford was another whose career was assured. Mr. Shand, who had passed advocate after him, was soon a busy man ; but in the year 1862, when two rising juniors who had just passed, Mr. Balfour and Mr. Asher, seemed likely to secure more business in one year than Mr. Watson had obtained in ten, the tide began to flow in his favour. Mr. John Marshall, afterwards a judge (the 2nd Lord Curriehill), was obliged by a serious illness to retire from practice for a time ; and he suggested that all his cases should be entrusted to Mr. Watson, who at once showed his capacity. Not long before, it was reported, he had been bitterly disappointed at not obtaining a small sheriffship in the country ; but after Mr. Marshall came so wisely to the rescue he began to make his way, and climbed up to a good practice. In 1865 he was retained, along with Mr. Rutherford Clark, for the defence of Dr. William Pritchard, the notorious criminal who was found guilty of poisoning his wife and mother-in-law at Glasgow, and whose execution on the 28th of July (1865) was the last public execution there.

It is probable that if Mr. Watson had not been at the bar he would have taken little or no interest in politics, read his newspaper, formed his opinions on the questions of the day, and said nothing about them. He always seemed inclined to liberal conservatism ; and it was understood at the bar that he had only refrained from accepting a small

witness to the marriage law of Scotland in the case of *Thelwall v. Yelverton* tried in the Court of Common Pleas at Dublin in 1861, and met his match when cross-examined by Mr. Whiteside. *Pattison*. "I do not understand your question. If you speak in a lower tone of voice I may. *Whiteside*. "See, Mr. Pattison, you are here to answer me, and not to lecture me. Pray, are you the gentleman who is called in your own country Preliminary Pattison ? Eh ? Always beating about the bush, and never coming to the point ? " etc., etc. The nickname of "Preliminary Pattison " stuck to the old man for many a year.



post which he might have obtained from Lord Advocate Moncreiff, on the advice of a friend, who suggested that his chance of promotion would be better if he adhered to the Conservative side. In 1867 Lord Advocate Patton included him in a batch of fourteen, old and young, who were named as advocate deputes. This brought him into the line of promotion in the party with which he was identified for the rest of his life ; but he had now reached a point in his career when a deuteship was of small importance. Solid merit and high legal acumen had been fast bringing him to the top of the tree ; and before long No. 6, St. Colme Street, Edinburgh, where he lived with his wife Margaret, daughter of Mr. John Bannatyne of Glasgow, whom he married in August, 1868, was the home of one of the busiest counsel at the Scottish bar.

In 1874 he became Solicitor-General for Scotland, and next year Dean of Faculty, when Mr. Rutherford Clark, who had succeeded Mr. Gordon as Dean, was raised to the bench.

There was a rugged simplicity about Mr. Watson which was very attractive. He was the most unaffected of men, and knew his own position so well that he could indulge some Bohemian tastes without fearing the conventionalities that weighed rather heavily on some men of his age. He was sometimes called morose ; but this was a mistake caused by the fact that he was shy with strangers. He was really fond of society, and liked nothing better than to sit of an evening and talk for hours, if he had no work on hand. In this he resembled Mr. Rutherford Clark, who was also agreeably unconventional. One young member of the bar with whom Mr. Watson sometimes chanced to walk home at night knew that he was sure to come in " for a few minutes." He would sit down, without taking off his hat or greatcoat, light a cigar, and pour forth anecdotes of his early struggles, stories about his much loved Lanarkshire—a division of which is now fittingly represented in Parliament by one of his sons—about fishing, shooting, anything ; and in summer daylight might be seen creeping along the face of the Castle rock before he left. He was, though this was

not commonly known, a very good mimic, and could take off people to the life. There was nothing he disliked so much as a solemn bore ; and such people fared badly at his hands if he had a good story to tell about them.

Though Mr. Watson's massive intellect and great legal powers placed him where he was, he would probably have much preferred a less strenuous career. He was without political ambition ; but there was no escape from public life, and when Mr. Gordon went to the House of Lords, in 1876, he became Lord Advocate, and Member for the Universities of Glasgow and Aberdeen, which he carried by a majority of 614 against Dr. Anderson Kirkwood.

This election was in November, 1876 ; and soon after Parliament met in February of next year, there was a debate on the state of Scottish business raised by Sir George Campbell, Member for the Kirkcaldy district, who had given notice of his intention to call attention : " To the extreme neglect of Scottish business in the session of 1876 ; to suggest the necessity of relieving the pressure which is felt in this House, and improving the arrangements for the conduct of business." Half a morning sitting was, he said, all that was given to Scottish affairs ; and when Members went down to Scotland, they found that the Eastern question and the neglect of Scottish business were the only subjects in which their constituents took any interest. He repeated the old complaint that English and Irish bills always came first, and that the only time given to Scotland was in the small hours of the morning. He said he was not sure what would happen if there was a Secretary of State for Scotland, and was afraid he would have the same difficulties to contend with as the Lord Advocates always had. " A Lord Advocate," he said, " is a benevolent despot to the Scottish Members. He does the best he can for them ; but he is never in a position to put sufficient pressure upon the Home Secretary to obtain justice for Scotland." He ended his speech by saying that if Parliament was not prepared to divide its time fairly between the different countries, there must be " some sort of Home Rule."

Mr. Duncan McLaren pressed for the appointment of a Scottish Secretary, and went into an account of Lord Eglington's Association.<sup>1</sup> "From that time," he said, "although the question has been allowed to smoulder, it has never been buried, and I believe it never will be buried." Scotland, he declared, was "far behind England in legislation."

Lord Advocate Watson then spoke. Having, he said, been hardly ten days in the House, he thought it would be bad taste in him to give an opinion as to the conduct of Scottish business. But, in answer to what Mr. McLaren had said, he denied entirely that England was ahead of Scotland in regard to legislation. "Having," he said, "a tolerably intimate acquaintance with the statute book, I am totally unable to give assent to that proposition. It may be exceedingly unpatriotic of me to refer to these things; but when it is broadly stated that we are so much behind, I feel as a Scotsman bound to rise and state, according to my knowledge, so far as it goes, that that statement in its broad terms can scarcely be accepted."

Mr. Cross, the Home Secretary, had made up his mind that the Lord Advocate's office was to be deprived of part at least of its old importance; and in the course of this debate he had an opportunity of explaining his views. Mr. Barclay, the Member for Forfarshire, having said that all business affecting Scotland was in the hands of the Lord Advocate, Mr. Cross interposed sharply, "I have charge of these matters"; on which Mr. Barclay said that if that was the case the Scottish Members would in future go to the Home Office when they wanted anything done.

This brought up the Home Secretary, who stated that he desired it to be understood in future that he was the Minister answerable for Scottish business. "Unfortunately," he said, "hitherto the office of the Lord Advocate has been in a different building from the Home Office; and the result has been that many applications in respect of Scottish business have been made to the Lord Advocate which ought to have been made to the Home Office, and have

<sup>1</sup> *Supra*, p. 184.



not been brought to my cognizance. I can assure honourable Members that any applications relative to Scottish business made to me at the Home Office will receive my prompt attention."

After this the office of the Lord Advocate in Spring Gardens was abolished; and three rooms in the Home Office were set apart for the Lord Advocate, his secretary, and a clerk.

Next year Mr. Cross brought in a bill for the appointment of an Under-Secretary of State for Scotland, which was read a second time in the middle of the night without any explanation. Though the few Scottish Members present wished to hear the views of the Home Secretary, and complained of the way in which the Government was treating them, there was no moving Mr. Cross; but in the end nothing more was heard of this bill.

The Government was now fighting for its life; not against hostile votes in the House of Commons, for there the Ministers were supported by large majorities, but against the agitation in the country on the question of the East, their support of Turkey against Russia, and the various points of their foreign policy, which were attacked by the Opposition. It was in August, 1879, when the controversy over the foreign policy of the Government was raging, and Mr. Gladstone was preparing for his descent upon Midlothian, that, as we have seen, Lord Gordon of Drumearn died. His place among the Lords of Appeal was not immediately filled; but when Parliament was dissolved in March, 1880, and the general election began, Lord Advocate Watson was not a candidate.

The battle having gone against Lord Beaconsfield, his Cabinet met for the last time on the 21st of April; and seven days later Mr. Watson became a Lord of Appeal as Baron Watson of Thankerton.

On the 7th of May, 1880, little more than twenty years from the time when he was waiting, almost without hope, for business in the Parliament House at Edinburgh, he entered the dim splendour of the House of Lords



clad in his robes as a peer, between Lord Hatherley and Lord Blackburn, preceded by the Gentleman Usher of the Black Rod, Garter King at Arms, and the Earl Marshal, and, having presented his patent on his knees to the Lord Chancellor on the Woolsack, took his place among the barons of England.

If he had made no name as Lord Advocate of Scotland, he was to make a great one in the final courts of appeal at Westminster. "The English bar," says Lord Macnaghten, "which is, I think, as critical and Conservative as it is really generous, watched with curiosity, not perhaps unmixed with some feeling of amusement, the advent of a Scottish barrister who seemed prepared quietly and without ostentation to fall in line and to stand shoulder to shoulder with them. It was not long before the attitude of the bar, reserved, perhaps, at first, changed to admiration and respect. . . . If one may form a conclusion from the deference which has long been paid to his opinions by English judges, by the highest courts of appeal of our own colonies, and even by the supreme court of the United States, that position is assured."

His work on the bench was beyond all praise; and his reputation grew till at last he was esteemed the most profound lawyer in the kingdom. The present Lord Chancellor Haldane says that once, when the English bench was very strong, he asked Lord Bowen whom he took to be the greatest lawyer upon it, and he answered "Watson." Pages of testimony by competent witnesses to the same effect might be quoted.

For nineteen years he filled his station as a judge in the two courts of last appeal; and on the 14th of September, 1899, he died at Sunlaws House near Kelso.

His place among the Lord Advocates is not conspicuous; but in the House of Lords, to which Scotland had not given of her best till he went there, and in the greatest of all courts of law, the Judicial Committee of the Privy Council, he had, it may almost be said, no rival. "He was," Lord Haldane wrote soon after his death, "a great servant of

the Empire. He did much to make stronger one of the real links which bind and unite its parts. Not many of those who talk glibly about Imperial Federation take the trouble to turn into the shabby doorway at the Whitehall end of Downing Street, and go up the worn, lead-covered stair, through the faded red curtains into the plainly furnished room where the supreme tribunal of the Empire sits. Had they gone there any time during the last fifteen years, they would have beheld at his best one of the greatest lawyers that ever sat upon the British bench, devoting his splendid powers to the spread throughout that Empire of faith in the justice of the Queen."

## CHAPTER IX

JOHN McLAREN

IN public life Mr. Duncan McLaren always seemed to those with whom he fought so many fierce battles, and most of all to the Whig party in Scotland, to be nothing but a cold, hard, bitter partisan, the very embodiment of political dissent and provincial radicalism in their most aggressive forms. But at the very time when he was ruthlessly breaking away from old friends, trampling down all who stood in his way, attacking Macaulay, driving out Mr. Adam Black, and undermining Mr. Moncreiff's influence, his domestic life was singularly peaceful. The marriage to Miss Priscilla Bright, his third wife, which took place soon after the stormy election of 1847, and about three years before that other election of 1852 which caused so much bad blood in Edinburgh, was in all respects fortunate. The favourite sister of Mr. John Bright, for whom she had kept house for some years before her marriage, she was a woman of such tact and good feeling that three families—the children of Mr. McLaren's first two marriages and of his marriage to herself—were brought up so successfully that her own youngest daughter was thirteen years old before she learned accidentally that she was only half-sister to the others.

At the time of this third marriage Mr. McLaren's eldest son, John, born at Ramsay Gardens, Edinburgh, on the 17th of April, 1831, was nearly eighteen.<sup>1</sup> When he was about

<sup>1</sup> His mother was Miss Grant Aitken, youngest daughter of Mr. William Aitken, merchant in Dunbar, whom Mr. Duncan McLaren married in 1829. She died in 1833. The second marriage, in 1836, was to Miss Christina

twelve years old a bad wetting had brought on a serious illness. The doctors gave him up ; but his father, who was nursing him night and day, refused to believe that there was no hope, took the case into his own hands, and gave him a quantity of wine when he was at the point of death. He was implored to let the boy die in peace ; but this treatment, instead of killing him, apparently saved his life, though the illness left traces in a thin, small frame, delicate lungs, and a cough which never left him for the rest of his days.

In his boyhood John McLaren was never strong enough for school, and was educated at home. Long afterwards he put on paper some recollections of his early years, which show how soon he was trained to take an interest in public affairs. "From 1841 to 1844," he says, "being unable to attend school or leave the house in the winter months on account of illness, I was a good deal with my father in the evenings. He wrote much for the press. . . . He was accustomed to hand me the sheets of MS. to look over as he wrote them, and in this way I came to know about Edinburgh politics and finance, the management of the police and the Infirmary, National Education, and the various notes of the 'drum ecclesiastic,' which in those days conspired to distract the public attention from the real and pressing necessities of the illiterate poor." His father, who was now in the full swing of the free trade movement, took him to a public meeting in the newly opened Music Hall at Edinburgh, where he heard speeches by Mr. Cobden and Mr. Bright. "Cobden," he says, "was my father's guest on this occasion, and his visit was the foundation of an intimacy which lasted through life." The Whigs were not yet converted to the total abolition of the corn laws ; and we may be sure that one of the lessons taught to young McLaren by his father was that a Whig was even more dangerous

Gordon Renton, youngest daughter of Mr. William Renton of Edinburgh. She died in 1841. A child of this marriage was the late Dr. Agnes McLaren. Charles Benjamin Bright McLaren, now Lord Aberconway, and the late Mr. Walter Stowe Bright McLaren, M.P. for the Crewe division of Cheshire, were children of the third marriage, which took place in 1848.



than a Tory, and that of all Whigs the most dangerous was Macaulay.

In 1844 the father and son went to Madeira, at that time the chief resort for persons suffering from weak lungs, and travelled home by Spain, Italy, Switzerland, and Germany. A few months after their return to Scotland there was another failure of health; and for the next two and a half years John McLaren lived abroad, returning about the time of his father's marriage to Miss Bright. "There is no doubt," he says, "as to the powerful influence my present mother exerted in strengthening and refining the intellectual character of my father, an influence which was not less beneficent towards the members of his family."

Four years later Mr. Duncan McLaren bought Newington House, on the south side of Edinburgh, where he often entertained his brothers-in-law Mr. John and Mr. Jacob Bright, and other political allies, and to which at one time letters to Mazzini used to be addressed by his friends in Italy. This centre of Scottish radicalism was Mr. John McLaren's home during the next few years. His health having much improved he was now attending the University. In Scotland the Parliament House had always been the favourite gateway to public life; and his training had naturally turned his thoughts in that direction. So he prepared for the bar by hearing lectures on law, and speaking at the Scots Law Society, which he joined in November, 1854.

He passed as an advocate on the 6th of December, 1856, took rooms in Darnaway Street, joined the Juridical Society, of which he was librarian for some time, and worked industriously. In a short time he published two books—a painstaking and useful collection of procedure acts, and a "Treatise on the Law of Trusts and Trust Settlements." These publications gained him some little credit, which he increased by preparing an edition of the lectures on the Law of Scotland delivered by Professor More, under whom he had studied at the University of Edinburgh.<sup>1</sup> This work also

<sup>1</sup> John Shank More, advocate, was Professor of Scots Law from 1843 till his death in 1861. Mr. McLaren's edition of his lectures was published

attracted attention ; but in those early years he was chiefly known as a quiet student, whose delicate constitution would always, it was thought, keep him back in a profession which requires considerable strength of body as well as mind. It had been supposed by some, who did not understand the manners and customs of the bar, that, seeing whose son he was, he might find the Parliament House rather a den of lions ; but he went there on his own merits, and “ Johnny McLaren ” was soon a general favourite.

Just at the critical point of his career his health once more gave way, and he had to spend a winter in Algiers. On his return he found that his absence had injured his prospects so much that it seemed as if he could never recover the lost ground. But he immediately sat down to write a treatise on “ The Law of Scotland relating to Wills,” for which he had already laid the foundations in his volume on trusts. He devoted himself to his new labours with intense application, read and wrote assiduously, and at last actually went the length of sitting up the whole of every alternate night till he had finished his task. This was of course a very dangerous mode of life for so delicate a man ; but the result was an elaborate work which at once brought his name prominently before the legal profession, and is still (in its third edition, published in 1894) recognized as a leading treatise on the subject with which it deals.

This work appeared in 1868 ; and on the 14th of December in that year the author was married to Miss Ottilie Schwabe, daughter of Mr. H. L. Schwabe of Glasgow. This marriage brought him little or no increase of means, and he continued to live for some time with his bride in the chambers where he had spent so many long hours working at his books ; but in January, 1869, he received the appointment of Sheriff of Chancery, a semi-judicial office, with a salary of £500 a year, which had been created by Lord Advocate Rutherford in 1847.<sup>1</sup>

in 1864. There is a short memoir of Professor More, written by Dean Ramsay, in the *Proceedings of the Royal Society of Edinburgh*, 1861.

<sup>1</sup> By the *Service of Heirs Act*, 10 & 11 Vict. c. 47.

By this time Mr. McLaren, though not in large practice, was a very learned lawyer, with great experience in writing and editing legal works, and fully equal to his next undertaking, which was the preparation of a new edition of the "Commentaries on the Law of Scotland," which were first published by George Joseph Bell, Professor of Scots Law at Edinburgh, in 1810.

The last reliable edition of the Commentaries—the fifth, edited by Professor Bell himself—was published in 1826. Since then there had been great changes in the law. To bring the work up to date was Mr. McLaren's object; and this he did with such skill that it was said at this time that, though he could not have written the Commentaries, there were few men, perhaps not even Professor Bell himself, who could have annotated them so well. The two massive volumes, which issued from the press in 1870, bore witness on every page to the trouble he had taken. His notes were concise and clear; and here and there he interpolated, carefully distinguished from the text of 1826, passages of his own, showing the state of the law at the time he wrote. One of these original passages, on the law of property in shipping, may be mentioned as a good example of his thorough workmanship.<sup>1</sup>

The party creed of most men depends, like their religion, on the atmosphere in which they spent their early days. Mr. McLaren had been brought up in a school of radicalism and dissent of the strictest type. He went to the Parliament House as a Radical. He and Mr. Francis Brown Douglas (who had opposed Mr. Adam Black when he first stood for Edinburgh) were the only two members of the bar who went on the hustings with Mr. Duncan McLaren and Mr. Miller at the election of November, 1868. But his patient study, when tracing the history of legislation and of legal decisions, had been fruitful of new ideas. His mind was naturally judicial; and he had acquired the habit of looking at both sides of every question. "Never assume that your party is right, merely because it is your party," was one of

<sup>1</sup> Vol. i. pp. 159-175.



his favourite maxims. Though born a Radical, he never despised the hoarded wisdom of the Whigs, with whom he had a great deal more in common than he ever got credit for, except amongst a few young men with whom he was in the habit of talking politics in the Parliament House. He was as firmly convinced as any Whig that Macaulay had been right when he said that though it was possible to make the rich poor by legislation, it was impossible to make the poor rich. He had none of that unbounded confidence in the wisdom of the lower orders, which some of his friends professed, and dreaded the time when they might discover that, if united and thoroughly organized, they would be an irresistible majority of the nation. He feared that, if such a time came, unless the masses were wisely led, and if politicians, in order to win votes, yielded to all their demands, there would be an end to liberty in this country ; and in the year 1873 he had the satisfaction of seeing his father firmly resisting the repeal of those provisions of the Criminal Law Amendment Act which were intended to prevent the coercion of working-men by the trades unions.

The working-men who presented addresses to Mr. Disraeli during his visit to Edinburgh in 1867 had asked him to legislate on the subject of combinations. "Upon that question," he had answered. "I would simply say that if the working-men come forward and ask Parliament to consider their case, then I think we should say, 'Let the whole question be considered, do not practically interfere for any particular object, but so legislate, if you must legislate, that the working-men of Britain shall be able to assert their rights, and at the same time fulfil their duties.'"

But this was not enough to satisfy a section of the new electorate which was now in possession of so much power. The right of the working-men to refuse their labour, and to combine in doing so, had not been called in question for many years ; and the outcry against the picketing clauses of the Criminal Law Amendment Act was nothing less than the assertion of a right to interfere with the freedom of



individuals, to deprive the workman and his employer of liberty to make such contracts as they pleased, and to forbid any labouring man to earn his bread during a strike, or to accept a scale of payment to which the trades unionists might object.

Mr. Duncan McLaren remembered the reign of terror in the West of Scotland during the domination of the Cotton Spinners' Association ; and the recent exposure of trade outrages at Sheffield, Manchester, and other towns, proved that the spirit of brutal tyranny was still rampant amongst the labour agitators. An attempt was now made to intimidate him. His opposition to the repeal of the laws against picketing, which he well knew always had meant, and always would mean, threats and personal violence, raised a storm. He had been one of the Tea Room party, which helped Lord Derby and Mr. Disraeli to " dish the Whigs " by refusing to support Mr. Gladstone's amendment substituting a £4 rating franchise for that lowering of the voting power almost to the foot of the social scale on which the Conservative party so strangely staked its own fortunes and the future of the country. This, Mrs. McLaren once wrote, was a great triumph for the working-men ; but now working-men were calling her husband a traitor and a shuffler, and a vote of no confidence was carried against him at a public meeting, while his colleague, Mr. Miller, who had taken sides with the agitators, was effusively thanked and praised.

The effect of this independent stand was that at the general election of 1874 the Whigs rallied to the support of Mr. Duncan McLaren, and worked in harmony with those Radicals who had not deserted him. The Moderate Liberals nominated the Lord Provost of Edinburgh, Mr. James Cowan, and divided their votes between him and Mr. McLaren ; and these two candidates were, in spite of determined opposition by the Trades Council, elected by a large majority, with Mr. Miller third on the poll, only a few hundred votes above Mr. Macdonald (afterwards Lord Justice Clerk), who had fought a spirited but always hopeless battle for the Conservative

party. One result of this election was that in Edinburgh the Liberals became practically united.

The chief Liberal Whip during the years which followed was Mr. William Patrick Adam of Blair Adam, Member for Clackmannan, and Kinross, who had succeeded that other famous Whip Mr. George Glyn, when he went to the Upper House on the death of Lord Wolverton. During the general election of 1874, when the Liberals had been so heavily defeated in England and seriously crippled in Scotland, it had been seen that the party organization was inadequate; and, perhaps as a natural consequence of the extension of the franchise, the principle of popular representation began to extend to the conduct of local party affairs. Hitherto these had been managed by small coteries, consisting of a few persons who were either self-elected or nominated by the sitting Member on the advice of his chief supporters. But now "Associations," as a rule more or less popularly elected, were formed in the constituencies, and the old system came to an end. Two Associations embracing the whole of Scotland, one for the east and north, and the other for the south and west, were formed. The Association for the north and east, of which Lord Rosebery was President, may almost be said to have had the Parliament House for its headquarters. A small group of the junior bar acted under the guidance of Lord Rosebery and Mr. Adam, with a very competent secretary, Mr. John James Reid, whose father had been one of the Whigs who organized the Grey Festival in 1834, and whose brother was afterwards, as Baron Loreburn, Lord Chancellor of England. But the only senior counsel who took any really active part in the re-organization of the Scottish Liberal party between 1874 and 1880 was Mr. John McLaren, who gave almost as much time to his political activities as to his professional work.

The abolition of patronage was, as we have seen, immediately followed by an agitation for disestablishment; and during the next few years this movement became formidable. The policy of Dr. Rainy, the Free Church leader and the life and soul of the whole movement, seemed to be that while

Mr. Gladstone, on whom his hopes were set, was to have his hands left free, every other Member of Parliament, particularly every Scottish Member, was to be pressed to join the attack on the Church. The result was that, under continuous solicitation and hints of opposition, Members were pledging themselves, in all parts of the country, to vote for disestablishment. The Liberal Churchmen—no mere phrase this in Scotland—became alarmed; and it was felt that some official statement must be made by Lord Hartington, who had become leader of the party on the retirement of Mr. Gladstone (January 1875). Otherwise there might be serious defections.

Fletcher of Saltoun once said that in Scotland a Whig was a man who “would sacrifice his all for the Church and a little less for the State.” A Whig might, in the nineteenth century, support disestablishment, with the object of making the National Church, in the widest sense of the words, stronger in the end; but he would never do so for party reasons. The leaders of the disestablishment movement, however, believed that the Liberal Churchmen, if sufficient pressure was put upon them by their party leaders, would “toe the line,” as it is called nowadays, if disestablishment was made a part of the official policy by Lord Hartington. This was very far from being the case, as Mr. Adam knew. The difficulty was to find a formula which would satisfy both the Churchmen and the nonconformists; and when it was arranged that Lord Hartington should come down to Scotland in November, 1877, the astute Whip had no lack of counsellors. One of those whom he consulted was Mr. John McLaren, who suggested almost the very form of words afterwards used by Lord Hartington. Threats, too, were used; and Mr. Adam was told that if his party did not pronounce for “disestablishment and disendowment,” there would be opposition to his candidates at the next general election in some places, while in others the nonconformists would abstain from voting, or even support the Conservative Government. To the last, within a few hours, indeed, of the time when Lord Hartington was to



speech, letters of advice and warning poured in upon him, and even, though they had no voice whatever in the matter, upon his subordinates in the Parliament House.

On the 6th of November (1877) Lord Hartington was in Edinburgh, where in the afternoon he received addresses from various "Liberal Associations," some of which were presented by Mr. McLaren and Mr. Alexander Asher, afterwards Solicitor-General for Scotland. In the evening there was a great public meeting. Lord Rosebery was in the chair. "You ask," he said, "what is this broad principle of Liberalism which we ought to support; and without regarding too strictly the various shades of opinion which prevail, I would venture to offer a definition." Here he paused. Not yet the experienced and ready "public orator," he hesitated and had to consult his notes; but after a moment or two he continued, "I believe that Liberalism is the principle in politics that neither class, nor creed, nor privilege shall hinder the progress of our natural development." Since 1867, he said, the whole Tory policy had been to dish the Whigs: "My Lords and gentlemen, we can say on behalf of our Association to-night that our policy, as opposed to that, is that the Whigs shall not be dished."

When the sagacious Whig leader rose he lost no time before explaining his views on the Church question. The bill abolishing patronage was, he thought, a great step towards disestablishment. "Scottish public opinion has never been unequivocally expressed upon this question. It has not, so far as I am aware, been made a test question at elections"; and he hoped it would not be made one in the future.

Then came the statement for which every one was waiting: "All I can say is that when, if ever, Scottish public opinion, or even Scottish Liberal opinion, is fully formed upon the subject, I think I may venture to say, on behalf of the Liberal party as a whole, that it will be prepared to deal with the question upon its merits, and without reference to any other consideration." The question of disestablishment was, in short, to be an open question; and



the people of Scotland were to discuss it amongst themselves.

Apart from the Church question, there had been considerable, and for a time very serious, differences of opinion in the Scottish Liberal party ever since Mr. Gladstone reappeared as an active politician, and began his momentous crusade against the eastern policy of the Government. It was feared that the party would soon split into two factions, one following Mr. Gladstone, and the other taking the more cautious line favoured by Lord Hartington. And at the same time there were in Scotland many active supporters of the extreme radicalism which Mr. Joseph Chamberlain was preaching at Birmingham. At this meeting, however, all sections of the party were represented.<sup>1</sup>

About a month later Mr. Gathorne Hardy went down to Edinburgh, and, in a speech to a meeting of "Conservative working-men," replied (December 10, 1877) to Lord Hartington.

Lord Hartington had treated the question of the Church as a purely Scottish question, which the people of Scotland must decide for themselves; but Mr. Hardy would not agree to this, and said that the Church of Scotland must be maintained as a bulwark of the English Establishment. This revealed a danger to which the English Liberals would be exposed at the next general election if their leaders committed themselves to disestablishment in Scotland; for, if they did so, a cry would be raised that the Liberals must be kept out in order to protect the Church of England. The party managers in Scotland, therefore, resolved to "gang warily"; but the general effect of Lord Hartington's speech was to encourage the friends of disestablishment, and to increase the uneasiness of the Liberal Churchmen, who began to fear that the time had almost come when they must choose between their party and their Church. Some months later Mr. Gladstone put the issue clearly before them. "The

<sup>1</sup> The Earls of Camperdown, Elgin, and Minto, Lord Abercromby and Lord Napier and Ettrick, were among the Liberal peers who attended; and speeches were made by Viscount Macduff (the future Duke of Fife), Sir Robert Anstruther, Mr. W. E. Baxter, Mr. Duncan McLaren, and Mr. John Blair Balfour, afterwards Lord Kinross.

Established Church of Scotland," he said in the House of Commons (June 18, 1878), "must stand or fall according to the general convictions of the people of Scotland."

When the year 1878 began public feeling in England was still, on the whole, on the side of the Government, though large gatherings in various places were protesting against that war with Russia for which some of the Ministers were apparently ready; but in Scotland the Opposition was gaining strength every day, and it was thought that Lord Hartington might be at the head of a Liberal administration within a very short time. It was natural, therefore, that there should be some speculations in the Parliament House about how various legal offices would be filled if there was a change of Government; and Mr. McLaren was now, for the first time since he came to the bar, spoken of as a possible Lord Advocate. His practice was not nearly so large as that of the principal leaders on the Liberal side; but he was their senior, and had of late taken such an active share in party business that his claims to office could not be ignored. It was certain that Mr. Bright's influence would be used on his behalf; his father had now a very commanding position amongst the Scottish Members; and Mr. Adam had found that, while some very eminent counsel gave him no encouragement in his preparations for the next trial of strength, and seemed, indeed, afraid to commit themselves, Mr. McLaren was always ready with advice and valuable information as to the state of feeling in Scotland.

In January, 1878, there was a vacancy in the Leith district; and Mr. McLaren offered himself as a candidate, and went down to Leith to address a meeting of the electors. Supporters of the Government mustered in force; trade unionists, who had not forgiven the "senior Member" for Edinburgh, were there; and there was a strong feeling in the constituency against the Parliament House. The uproar was so great that Mr. McLaren, when he rose to make his speech, could not be heard for some time. But remembering, as he afterwards said, how Mr. Bright had once told him that the best way to deal with a turbulent audience was to continue

speaking and take no notice of interruptions, he went on, and at last obtained a quiet hearing. He made such a good impression that a strong committee was formed to promote his return ; but this candidature came to nothing. He had already put his resignation of the office of Sheriff of Chancery in the hands of his father, who was in London. But though old Mr. McLaren had told him to go on with the contest if he once began, he changed his mind, and wrote a letter so full of objections that his son felt he must retire, though it was all but certain that he would be elected.<sup>1</sup>

Then came that year of turmoil, when the country, which during the last Parliament had been alarmed and wearied by the domestic policy of Mr. Gladstone, became alarmed and wearied by the foreign policy of Lord Beaconsfield ; and in January, 1879, Mr. Gladstone, who had announced that he would not again stand for Greenwich, accepted the invitation to Midlothian.

A year before, on the death of Sir William Stirling Maxwell, Mr. Charles Parker had written to Mr. Gladstone suggesting Perthshire ; but he had replied that he would not resign his seat to fight a by-election.<sup>2</sup> One of the seats for Edinburgh was offered ; but Midlothian was chosen as the field on which the deciding round of the long battle between Lord Beaconsfield and Mr. Gladstone was to be fought out.

In England the Liberal press applauded Mr. Gladstone for "courage" in opposing Lord Dalkeith in Midlothian, while the Conservative press accused him of "audacity." The territorial influence of the Duke of Buccleuch was certainly strong, and he was deservedly popular as a landlord. But this was, to a great extent, neutralized by the influence and popularity of Lord Rosebery and Lord Stair. The county,

<sup>1</sup> The Liberal candidate, Mr. Andrew Grant, was returned by a majority of nearly 3,000 on January 29, 1878.

<sup>2</sup> The city of Perth was also vacant at that time, the Hon. Arthur Kinnaird having succeeded to the peerage ; and Mr. Parker, who had lost the county in 1874, was elected on January 29, 1878. The county election ended in the election of Colonel Home Drummond Moray, who defeated the Liberal candidate, Captain the Hon. Fulke Greville, afterwards Lord Greville, on February 4.



moreover, was scarcely such a "Tory stronghold" as was supposed. There had been four contested elections between 1832 and 1868; and of these the Conservatives had won two, and the Liberals two. The Liberals had carried the seat in 1868; but they lost it in 1874, owing to the complete want of organization. The register had been neglected, and all was chaos. A frantic effort was made at the last moment by a few volunteers from the Parliament House, who were asked to see if nothing could be done to save the seat. But it was too late; and even then Lord William Hay, the Liberal candidate, was only 135 votes behind Lord Dalkeith.

Since 1874 the constituency had been thoroughly organized. There was a "Midlothian Liberal Association," with Lord Rosebery as President, and a very active committee in every parish. Every elector in the county had been canvassed; and elaborate calculations showed that, after giving all the doubtful votes to Lord Dalkeith and deducting five per cent. from the estimated strength of the Liberals, there was a majority of 206 for Mr. Gladstone. Mr. Adam laid these figures before Mr. Gladstone, who, after a second canvass of certain districts, to make assurance doubly sure, accepted the invitation on the 29th of January, 1879.

From the first there was very little doubt of what the result would be amongst those who knew how matters really stood; and there was nothing very extraordinary in an eminent Scotsman standing for an important Scottish constituency. But Mr. Gladstone had filled so large a place in history, and played so many parts, that the question was immediately asked: Why is he coming to Scotland after all these years? There must be some very special reason. Some very special stroke must be intended. Some dark and sinister design must have been formed. He can have no personal antipathy to the Duke of Buccleuch, his old colleague in the days of Sir Robert Peel. His friendship for Lord Rosebery does not explain the move. It is not enough to say that he wishes a conspicuous platform from which to



arraign the policy of Lord Beaconsfield. That could have been found as easily in England. There must be some other explanation of this new departure ; and the only explanation is that he is coming to Scotland because he has made up his mind to disestablish the Scottish Church. It was noticed that at Leeds, a few days before the invitation to Midlothian was accepted, a large conference of Liberals had declared for disestablishment in Scotland, which they imagined would unite the party at the next general election. The question, they had said, was "ripe for immediate practical action" ; and messages were sent to Lord Granville and Lord Hartington, as the Liberal leaders in the two Houses of Parliament, declaring that it ought to be included in the official programme of the party.

The effect of all this was that the Liberal Churchmen in Scotland became seriously alarmed, and sent a deputation to Mr. Adam in the spring of 1879, to ask for a definite assurance that the Liberal leaders, if returned to power, would not bring in a measure disestablishing the Scottish Church until the question had been put to the people of Scotland as the main issue at a general election. They were satisfied with what he told them ; but the disestablishment party, who were always trying to use the Liberal organization for their own purposes (to "capture" it, as it was called) became in their turn alarmed. Dr. Rainy—most of the laity were quite indifferent, and the movement was mainly clerical—wrote to Mr. Gladstone expressing an apprehension lest the Liberal leaders should pledge themselves not to raise the question during the next Parliament, and received an answer which clearly proved that, though he adhered to Lord Hartington's statement, Mr. Gladstone would promise nothing. "I cannot profess," he said, "that in the present condition of Imperial affairs, it occupies the first or nearly the first place in my mind." In these circumstances both parties awaited Mr. Gladstone's advent to Midlothian with mingled hopes and fears.

The first "Midlothian campaign," which has been so often described, began with a meeting at Edinburgh on

the 25th of November (1879), at which Mr. McLaren was put up to move the vote of thanks to Mr. Gladstone ; and at Dalkeith, on the following day, Mr. Gladstone made his statement on the Church. "The question," he said, "directly raised is this: May the members and ministers of the Established Church of Scotland trust, make themselves assured, that, so far as there can be any certainty of what is future in human affairs, there will be a full consideration of this matter by the people before the Parliament which has to deal with it proceeds to deal with it ? Lord Salisbury says, No, see what happened in the case of the Irish Church." Then he proceeded to defend his policy in Ireland, and gave that unlucky explanation, which was so often quoted against him, that the breaking down of a prison in London, and the murder of policemen in Manchester, brought the question of the Irish Church within the range of practical politics. Resolutions condemning the Irish Church were, he pointed out, carried in the House of Commons ; but there was a dissolution expressly on the question. "The verdict of the country was given only after a full trial and consideration ; and this is what the Established Church of Scotland fairly and justly asks."

This made the Liberal Churchmen fear that, though no bill for disestablishment would be brought in during the next Parliament, the question might possibly be raised by resolutions ; and there was an uneasy feeling that, though disestablishment might not have been a main issue at the elections, the votes of the Scottish Members might be held to represent the wishes of the Scottish people. A memorial explaining the difficulty the Liberal Churchmen would have in supporting the Liberal candidates was, therefore, sent to Mr. Adam, whose answer was that he could not understand "what madness of suspicion" possessed them, and that he did not feel justified "in advising Mr. Gladstone to add to or subtract from the words he used at Dalkeith." And there the matter rested till the general election of 1880.

Meanwhile, long before the first Midlothian campaign,

Mr. Adam had found candidates for most of the constituencies in Scotland ; and among them the Parliament House was represented by Mr. John Blair Balfour, Mr. Alexander Asher, and Mr. McLaren. Mr. Balfour, who shared with Mr. Asher the place which had once been filled by such men as Mr. Inglis, Mr. Watson and Mr. Young, had been chosen to contest North Ayrshire, one of the seats lost by the Liberals at the last general election. Mr. Asher was to attempt the re-conquest of the Universities of Glasgow and Aberdeen. Mr. McLaren was going to the Wigtown district, which had been represented by Mr. John Mark Stewart since 1874, and where a very close fight was expected.<sup>1</sup>

Mr. McLaren finished his public work for the year with an address to the Scottish Chamber of Agriculture on a topic in which he took far more interest than in disestablishment—the land laws. In this address—the subject is very much alive at present—he laid down two principles. First, free scope should be given to all the forces which led to the acquisition and dispersion of land, avoiding all direct interference with these forces. “ My second principle,” he explained, “ is the removal of the existing obstacles to free contract between landlord and tenant, and the placing the parties, as far as possible, in a position of such independence that they can contract on equal terms.” He said it was a remarkable fact that in France and America, where the economic distribution of land had free play, the two classes of landowning farmers and tenant farmers flourished side by side, each contributing in his own way to the development of agricultural industry, and neither being able to drive the other out of the field. From this he drew the conclusion that to have the two systems of land tenure, which he called having mixed tenure, was natural and best. He suggested that the farmer with large capital would generally prefer to own his farm, so as to secure in perpetuity the full value of the im-

<sup>1</sup> After the general election of 1874, when Lord Advocate Young was defeated, the judges had, on a scrutiny, unseated Mr. Stewart. Another election followed, when Mr. Stewart won by 8 votes. Again a scrutiny was demanded, and his majority was reduced to 2.



provements he made ; while for the man with only small means the position of a tenant farmer would be preferable.

“ Holding as I do,” he said, “ that the development of agriculture will be promoted by the establishment of two classes of cultivators, freeholders and tenants, *and that all legislative interference in favour of the one class or the other is a political mistake*, the reform of the land laws embraces two objects which correspond to the propositions I ventured to state in the outset : First, free trade or freedom of exchange, as applied to the sale of lands, by the abolition of existing entails, and their prohibition in the future ; Secondly, freedom of contract, or, to speak more accurately, equality of contract, between landlord and tenant, by the removal of all artificial preferences in favour of the proprietor. Such are the laws of hypothec and distress, and the rule that whatever is placed in or on the soil becomes the property of the proprietor.”

This address, delivered at a time of great agricultural depression, was well received by the Chamber of Agriculture. But it remained to be seen whether Mr. McLaren would have an opportunity of giving practical effect to his opinions in the House of Commons.<sup>1</sup>

On the 8th of March (1880) Sir Stafford Northcote told the House of Commons that the verdict of the country was to be taken immediately. Parliament was not dissolved till a fortnight later ; but by that time the general election had already begun, and Mr. Gladstone had opened fire at a

<sup>1</sup> A friend of Mr. McLaren's, who examined the Register of Entails for him soon after this address, found that since 1848, the year of the Rutherford Act, there had been 616 new deeds of entail, and only 435 disentails. Mr. McLaren wrote saying that the chief reasons for the comparative inefficiency of the Rutherford disentailing clauses had been the necessity of purchasing the consents of expectant heirs when the entail was to be prematurely terminated, and the facilities for re-entailing an estate, and thus prolonging the entail for another generation. “ It appears to me,” he said, “ that those incidents are inseparable from a system of entail law ; because to allow a settlement to be placed for a certain number of lives, and to allow that settlement to be broken without the consents of the expectant heirs, or compensation for the loss of their chances of succession, is either a contradiction in terms or a violation of the rights of property.”



meeting in the Music Hall at Edinburgh presided over by Mr. Duncan McLaren.

Mr. Gladstone made it clear that the only issue he put before the electors was whether they approved or disapproved of Lord Beaconsfield's policy at home and abroad; but within a few days he found it impossible to evade the local question of the Church, on which he made yet another statement. There was, he said, no analogy between the Churches of Scotland and Ireland. The Church of Ireland he described as an alien planted by foreign force, while the Church of Scotland grew out of the soil, and instead of being forced upon the people, was forced by the people. The question could never be decided except by some strong and clear manifestation from the people of Scotland. "It is the people of Scotland to whom it has been referred. That reference must be a real reference. There must be a real consideration in order to a real decision. In my opinion it must be a manifest, and pointed, and undeniable decision, in order to bring about any fresh issue, or any great change in regard to the National Church."<sup>1</sup>

This statement, based on the plain Whig principle that no irrevocable change, in the constitution or the law, should ever be made till the electors have distinctly said they wish it, seemed clear enough. But some of the Liberal Churchmen remained perturbed. Dr. Tulloch said it was his sober opinion that unless there was a Conservative Government in power the days of the Church of Scotland were numbered. "I have no doubt," he wrote in April (1880), "that Mr. Adam and all the official wire-pullers are gradually tightening the cords of strangulation round the old institution." In this he was mistaken. The real aim of those who were managing the affairs of the Liberal party was to put the question of the Church aside, to get rid of it. It was put aside; and the general election became more and more a genuine party fight of the old-fashioned sort. Just as in England the nonconformist Achilles, tired of nursing his wrath, took down his spear and helmet from the tent-pole,

<sup>1</sup> At Gilmerton, March 22, 1880.

and stalked forth to battle, so in Scotland there was no hanging back of the Liberal host. Churchmen, Free Churchmen, and the "Voluntaries," fought side by side; and though a majority of the Members they elected were in favour of disestablishment, there was no reason for saying that they represented the settled verdict of the Scottish people on that question.

This was the last time that the Scottish Liberals were thoroughly united—for by 1885 many had come to the parting of the ways—and the enthusiasm for Mr. Gladstone far surpassed even the old enthusiasm for Lord Palmerston. The Conservative press was curiously weak in Scotland, and quite unable to cope with such papers as the *Scotsman*, the *Glasgow Herald*, the *Dundee Advertiser*, and the *Aberdeen Free Press*. The Whig peers and country gentlemen, the Liberal farmers, and the merchants, tradesmen, and artisans of the great towns, made up a formidable combination; and the attack on Ministers was irresistible. In Midlothian Mr. Gladstone's majority was 211, almost exactly what had been predicted eighteen months before.<sup>1</sup> In Edinburgh Mr. Duncan McLaren and Mr. Cowan polled almost the same number of votes, and defeated by a majority of more than 11,000 Mr. Macdonald, who had volunteered once more to lead a forlorn hope for his party. From the other towns no supporters of the Government were returned, and from the counties only six. At this general election the tide of Liberalism in Scotland rose to its highest mark.

While the whole kingdom was watching the doings in Midlothian, Mr. Asher had lost his election for the Universities of Glasgow and Aberdeen; and far away in the south-west Mr. Balfour and Mr. McLaren had gone through the usual routine of electioneering in North Ayrshire and the Wigtown district. Mr. Balfour's adversary was Mr. Cochran Patrick, a most able and popular county man, who won by 55 votes.<sup>2</sup>

<sup>1</sup> " 'Drove into Edinburgh about four,' Mr. Gladstone records. 'At 7.30 Mr. Reid brought the figures of the poll: Gladstone, 1,579; Dalkeith, 1,368; quite satisfactory.' "—Lord Morley's *Life of Gladstone*, Bk. vii. ch. viii.

<sup>2</sup> Mr. Robert William Cochran Patrick, afterwards permanent Under-Secretary for Scotland, died in 1897.

In the Wigtown district the electors went with the flowing tide, and put Mr. McLaren at the head of the poll by a majority of 23.

At the end of April, after Lord Hartington had stepped aside, the second Gladstone administration was formed ; and a Lord Advocate had to be appointed. It was rumoured that Lord Young wished to descend from the bench, and return to political life ; but this was clearly an impossible arrangement. Without doubt the two leaders of the Liberal side of the bar, in point of practice, were Mr. Balfour and Mr. Asher ; but they had both been defeated, which left Mr. McLaren the only Scottish lawyer with any pretensions to office who had a seat in Parliament. Apart from this, his seniority to Mr. Balfour and Mr. Asher, and his personal qualifications as an accomplished lawyer, to say nothing of the active part he had taken in promoting Mr. Gladstone's return for Midlothian and in the general business of his party, would have made it very difficult to overlook him. Some of the more rigid Whigs, on the bench as well as the bar, shook their heads when they heard that the son of their old enemy might receive the blue ribbon of the profession. Nominally at least a Radical, he would be the first Lord Advocate chosen out of a certain direct line of succession which had been tacitly recognized for the last fifty years. There was at first some uncertainty. If Mr. Balfour, Lord Moncreiff's son-in-law, had won North Ayrshire he would have secured the prize ; but Mr. Bright's influence was used in favour of his relative, who was appointed, with Mr. Balfour as Solicitor-General.

Then came a series of electoral misfortunes similar to those which befell Lord Advocate Inglis. On going back to Wigtown for re-election on taking office, he found himself again opposed by Mr. Mark Stewart. The appointment of Lord Ripon, who had recently been received into the Roman Catholic Church, to the vice-royalty of India had given offence. Admiral Sir John Hay, who, it may be remembered, had a remarkable command of strong language, having just

lost his own election at Stamford, gave vent to his feelings in a personal attack on the Lord Advocate, at whose friends and relatives in the House of Commons he sneered as a "happy family party," and, assisted by other means which were afterwards revealed when the election judges made inquiry, induced the electors to turn round and return Mr. Stewart (May 18, 1880).<sup>1</sup>

The like ill-fortune pursued Mr. McLaren to another constituency. At the general election two Liberals, Sir Dudley Coutts Marjoribanks, afterwards Lord Tweedmouth, and the Hon. Henry Strutt, had been returned for Berwick-on-Tweed. In June Mr. Strutt succeeded to the peerage on the death of his father Lord Belper; and the names of Mr. Henry Jerningham of Longridge Towers, Berwickshire, and Mr. McLaren were submitted to the electors. Mr. Jerningham retired, and advised his friends to vote for the Lord Advocate, who was opposed by Captain Milne-Home, who had been Member for Berwick-on-Tweed in the last Parliament, but had lost his seat at the general election. Local feeling ran high in favour of Captain Milne-Home, and he was elected.<sup>2</sup>

In the first session of the new Parliament the law of agricultural hypothec, about which Mr. Gladstone had said a good deal in Midlothian, was abolished in the case of farms exceeding two acres; and the old grievance of the hares and rabbits was partially removed by the Ground Game Act. But in consequence of his defeats Mr. McLaren had to perform his functions as Lord Advocate, and watch the course of Scottish business, without a seat in the House of Commons.

If he had been cordially received by Sir William Vernon Harcourt it might perhaps have been more convenient for a Lord Advocate who was not in Parliament to work in the Home Office than in the old chambers at Spring Gardens. But there was friction between them from the first. The

<sup>1</sup> This election was declared void on petition, and Mr. Stewart was unseated.

<sup>2</sup> Captain Milne-Home was a grandson of Admiral Sir David Milne. *Supra*, p. 29.



Home Secretary detested the school of radicalism of which Mr. Duncan McLaren was a leader, and was inclined to treat his son as an interloper who ought not to have been given a place in the Government. The Lord Advocate, too, had unwittingly run counter to Sir William's wishes soon after the administration was formed. While he was in the Wigtown district for his second election the Ministers were considering their Ground Game Bill. There was a difference of opinion between Mr. Gladstone and the Home Secretary. Neither would give way ; and it was agreed to send for the Lord Advocate, and abide by what he said. Mr. McLaren left his election and went up to London, where he was called to a meeting of the Cabinet, and had the point in question put to him, without being informed of the disagreement between the Prime Minister and the Home Secretary. He gave his opinion, which happened to agree with that of Mr. Gladstone ; and Sir William Harcourt had to accept it. This was just one of those trifling incidents which might irritate a man of Sir William's temperament. In any case, it was for various reasons unlikely that they would ever be in harmony. They had nothing whatever in common except that they were members of the same Government.

Parliament rose, after an anxious summer for the Lord Advocate in his three rooms at Whitehall, on the 27th of August. Three months later Mr. Adam, who had been appointed Governor of Madras, sailed for India ; and Mr. Balfour succeeded him as Member for the counties of Clackmannan and Kinross.<sup>1</sup>

This made the Lord Advocate's position even more awkward than before. The Scottish Members had been complaining of his absence from the House of Commons, as they

<sup>1</sup> Mr. Balfour had been one of the deputation to Mr. Adam on the Church question (*supra*, p. 330), and when standing for North Ayrshire at the general election he had avoided the question of disestablishment. But in his address to the electors of Clackmannan and Kinross he said that he was "now convinced, by the combined force of many considerations, that disestablishment would be a measure of justice." Liberal Churchmen were surprised at this change, and still more at his refusal to say how he would vote if a resolution in favour of disestablishment was moved in the House of Commons ; but he was not opposed.

had formerly complained of the absence of Mr. Patton and Mr. Gordon, and might soon begin to ask why he should remain in office, when the Solicitor-General was in Parliament and ready to take his place. From this dilemma he was rescued by a transaction about which there was something almost pathetic. Old Mr. Duncan McLaren's face was still as bleak and inscrutable as ever, and his radicalism remained unchanged; but time had somewhat mellowed him, and few men in the House of Commons, where he had done much useful work, were more respected. He had no wish to retire till the end of that Parliament; but he now resolved to sacrifice himself for the son whose life he had saved in childhood. On the 17th of January (1881) he informed Lord Richard Grosvenor, who had succeeded Mr. Adam as Liberal Whip, of his intention, and on the same day wrote to the Chancellor of the Exchequer asking for the Chiltern Hundreds. Then, and not till then, he told his son what he had done.

Two days later the Lord Advocate's address to the electors of Edinburgh was issued.<sup>1</sup> Mr. Duncan McLaren was immediately attacked by some of the Radicals, who said that to bring in a member of the Government, just because he was his own son, was a "trick," and unworthy of the man who had driven out Macaulay and Lord Advocate Moncreiff. The malcontents resolved to fight; and the tall figure and towering forehead of Mr. Edward Jenkins, "Ginx's Baby," who had once been Member for Dundee, appeared on the streets of Edinburgh. But this opposition was unavailing; and Mr. McLaren won his election by a large majority.<sup>2</sup>

The old question of Scottish administration was at this time once more under discussion. The proposal of Mr. Cross (1878) to transfer the political functions of the Lord Advocate to an Under-Secretary had been thoroughly disliked in Scotland, where it was regarded as another step towards the centralizing of all authority in London. Even that large section of the community which was of opinion

<sup>1</sup> Dated, Whitehall, January 19, 1881.

<sup>2</sup> The figures were: McLaren, 11,390; Jenkins, 3,940.

that the Lord Advocates should be relieved of their political duties was opposed to any lowering of the importance and dignity of a purely Scottish office, and the handing over to subordinate officials of that power and influence which had been, for so long a time, in the hands of men who had, most of them at least, risen to the foremost ranks of a profession the members of which had always played so great a part in the public affairs of their country. There was, however, a feeling that some change was necessary. Either the Lord Advocates must be formally entrusted with greater responsibility, and their position more clearly defined, or a special Minister for Scotland must be appointed. A memorial on the subject was prepared by a number of Scottish Members of both parties ; and a few days after Mr. McLaren had taken his seat in the House of Commons it was presented to the Prime Minister.

No Lord Advocate, the spokesman of the memorialists said, could possibly have been more attentive to the wishes of Scottish Members than Mr. McLaren, or done more to assist their efforts to promote legislation. But the position of the Lord Advocates was always difficult ; and there was a general wish for the appointment of a Minister with a seat in the Cabinet, as the only means of obtaining adequate attention to Scottish business.

“The representatives of other parts of the United Kingdom,” Mr. Gladstone replied, “may be anxious to bring themselves into public notice ; but the practice of Scottish Members has been to go directly to the point, and to do their work in the speediest manner, and in the way that brings them least before the public, and consequently secures for themselves the least possible credit.” They really, he said, had a grievance in the way their business was treated. Constitutionally the Home Secretary was Minister for Scotland ; but the business of the Home Office had greatly increased of late years, so that various interests had suffered, and especially those of Scotland, which had been “shouldered out.”

Nothing, however, came of this interview. The fact was

that Mr. Gladstone did not wish to incur the expense of creating a new department with a staff of paid officials, and would not commit himself. The appointment of Lord Rosebery as Under-Secretary at the Home Office in that year was well received in Scotland ; but it left the general question of Scottish administration unchanged.

Mr. McLaren, now at last on the front bench, knew, as he wrote to a friend in Scotland, that the Cabinet, though fully aware of the wishes of so many Scottish Members, were unlikely to make any change in the meantime. He went on with the duties of his office as usual. At the end of March, in consequence of a suggestion that the question of local government should be carefully considered in connexion with financial reforms, he called the Scottish Members together, explained his own views, and printed an elaborate memorandum on the subject which was circulated in Scotland. He was chairman of a Select Committee which prepared the bill which, though opposed as a "social revolution," passed into law as the Married Women's Property (Scotland) Act, 1881. Another bill, which he drafted to amend the law relating to teinds (tithes) in Scotland, was opposed by the disestablishment party, ostensibly over legal details, but really lest it might be of service to the Church. He also prepared an entail bill on principles which were embodied in a statute of the following year. But these and other activities were suddenly terminated.

For a number of years Mr. Gladstone, always so wisely on the outlook for opportunities of retrenchment, had cherished plans for diminishing the cost of the public departments in Scotland. So long ago as 1870, when there was a vacancy on the bench of the Court of Session, he had said that, though it was to be filled on that occasion, it must be understood that the judicial strength in Scotland was not what it ought to be, and that the attention of Parliament must be called to it ; and early in the session of 1881, when there was a vacancy caused by the resignation of Lord Gifford (January 25), a bill to reduce the number of Scottish judges from thirteen to eleven was brought in by Lord Chancellor Selborne. This



measure, which would, if it had been carried into law, have injured the efficiency of the Court of Session, and saved only a small sum of public money, passed its first and second readings in the House of Lords with scarcely any explanation. But it was so unpopular in Scotland, not only with the legal profession but also with the general public, that it was not proceeded with ; and in the beginning of August it became known that a new judge was to be appointed.

The Lord Advocate, in accordance with the usual practice, made a recommendation to the Prime Minister.<sup>1</sup> To his surprise he was requested to take the post himself. He declined, saying that he preferred to remain Lord Advocate, on which Mr. Gladstone asked for an interview. "I am sorry, Lord Advocate," he said, "that you are unwilling to take a position which Lord Young accepted after a long period of service." Mr. McLaren replied that Lord Young had been in Parliament for several years, whereas he himself, after fighting four elections, had sat for only a short time, and was therefore unwilling to give up his office and leave the House of Commons. Presently Mr. Gladstone rose—they had been sitting at a table in the Prime Minister's house in Downing Street—and told him to think the matter over.

A week of suspense followed, during which the Lord Advocate never went to the Home Office. Sir William Harcourt, who had all along found Mr. McLaren stiffer to deal with than he expected, would not listen to Mr. Bright, who protested against what was being done, and in private went the length of saying that he might resign his own place in the Government if the Lord Advocate was driven out. Perhaps, as Mr. McLaren sometimes thought, it had occurred to Mr. Gladstone that it would be easier to satisfy the Members for Scotland on the question of Scottish administration if a change was made in the person of the Lord Advocate than if one who had been appointed on the old footing remained in office. However this may have been, the Prime Minister, with the Bradlaugh question and many

<sup>1</sup> He sent in the names of two members of the bar, one of whom was appointed to a judgeship at a later period.

other troubles to occupy him, was not to be worried about the Lord Advocateship. Other influences were at work in a circle where Mr. McLaren had never been a *persona grata* ; but it is enough to say that the Lord Advocate, finding it impossible to resist any longer, sent a letter to Downing Street accepting the judgeship. Mr. Bright, who saw much of him during this trying time, said afterwards that his respect for John McLaren rose to admiration when he witnessed the dignity with which he faced his disappointment.<sup>1</sup>

Taking the title of Lord McLaren on receiving his appointment, he settled down to work next autumn, and remained on the bench for nearly thirty years. He made an excellent judge, open-minded, patient and courteous. His qualifications as a lawyer were of course beyond question ; and his opinions, which were models of close reasoning and clear statement, were delivered in the neat, incisive manner of which his practice as a legal writer had made him a perfect master. He had a good deal of quiet humour too, and could hold his own even with Lord Young. " We've just reversed one of your judgments, McLaren ! " Lord Young told him cheerily one day. " Ah ! " said Lord McLaren. " If I had known that case was going to the Second Division, I would have written Second Division law. " There was a great friendship between them ; but Lord Young would always have his joke. Once while he was sitting for his bust to Mrs. Wallace, Lord McLaren's daughter, he came to her studio. " Well, " he asked. " What's your father been doing ? " " I hear, " said Mrs. Wallace, " that he has been agreeing with one of your decisions. " " Has he ? I may be right for all that, " answered his lordship promptly.

Lord McLaren had a family of three sons and three daughters, and was survived by one son, Duncan, and by his daughters, the youngest of whom, Otilie, now the wife of Mr. William Wallace, musical composer, studied under Rodin at Paris, and has shown much ability as a sculptor. Her bust of Lord Young is in the Parliament House. The

<sup>1</sup> Mr. Balfour then became Lord Advocate, and Mr. Asher, who had been elected for the Elgin district in July, Solicitor-General.

eldest, Katharine, married Mr. F. S. Oliver of Checkendon Court, Oxfordshire, author of the *Life of Alexander Hamilton*; and the second, Esther, married Mr. Alan Blackburn, youngest son of the late Professor Blackburn of Roshven, Inverness-shire. In that county Lord McLaren purchased the estate of Glenuig, beautifully situated on the shores of Loch Ailort, where he used to spend the vacations with his wife and family. Yachting was his favourite amusement; and he was devoted to the study of botany, astronomy, and mathematics. He had many of those scientific interests. He had been a Fellow of the Royal Society of Edinburgh since 1869, and after he went on the bench was elected Vice-President for three terms of office. "He was of invaluable service to the Society when delicate questions arose requiring careful deliberation and knowledge of affairs. His skill in drafting documents was in continual request, and several of the more recent modifications in the rules of the Society were framed by him."<sup>1</sup> He was also for some time President of the Scottish Meteorological Society, and a director of the Ben Nevis Observatory; and in these pursuits he was a close friend of Professor Guthrie Tait and of Lord Kelvin, who was often his guest in Edinburgh. "He was," says Professor Knott, "an amateur of Science in the highest sense of the word." He received the degree of LL.D. in 1882 from the University of Edinburgh, and from Glasgow in the following year, along with Mr. Bright, who was then installed as Rector; and the same honour was conferred upon him at the fourth centenary celebration of the University of Aberdeen.

After he became a judge Lord McLaren seldom wrote anything except his papers for the Royal Society; but on the death of Lord President Inglis he contributed an article to the *Juridical Review* (1892), from which one sentence may be quoted, so aptly does it describe that great judge's place in the history of Scottish jurisprudence: "His

<sup>1</sup> *Proceedings of the Royal Society of Edinburgh*, vol. xxxi., part v. p. 695. A list of scientific papers by Lord McLaren is given at p. 696.

philosophical expositions of legal principles," he says, "are the equivalent in modern law of the institutional writings of preceding centuries; and they have to a large extent superseded and rendered antiquated the more ancient sources of authority on which they are founded."

He himself sat, after serving his time as an "Outer House" judge, in that First Division of which Lord President Inglis was so long the head till the year 1909. About that time there were considerable arrears of business in the two Divisions, and the Lord President (Dunedin) appointed a temporary Third Division of three judges, with Lord McLaren as President, to wipe them off. The work of this court was finished in June, 1909; and after that Lord McLaren was never able to take his seat on the bench again. He obtained leave of absence, and seemed to be recovering; but in March a chill led to a relapse, and he went to Brighton, where, after an illness of two days, he died on the 6th of April, 1909, in his eightieth year.

Though Lord McLaren's Parliamentary career had been cut short against his wish he never lost his absorbing interest in public affairs—he was reading the political news in *The Times* within twenty-four hours of his death—and watched all Scottish questions with special attention. He had himself never thought that it would seriously affect the position of the Lord Advocates whether their work lay alongside the Home Secretary or a Scottish Secretary; and, on the whole, this opinion seems to have been borne out by the course of Scottish business since 1885, when effect was given to the views expressed by Cockburn fifty years before, and a Secretary of State was appointed under the statute which placed the administration of Scotland on its present footing.

Soon after the close of the long controversy on Scottish administration, about which so much has been said in this volume, Mr. Duncan McLaren died (April 26, 1886), having just declared his opposition to Mr. Gladstone's Irish policy. If there was an election, he wrote from his deathbed, "I should vote for the candidate against the Irish Parliament,



whatever his other political convictions might be, whether Radical, Whig, or Tory, so strong is my conviction of the ulterior evil consequences which must flow from such a measure."

Lord McLaren, though as a judge he was of course precluded from taking any personal share in politics, was also strongly hostile to the Home Rule movement, and followed Mr. Bright into the Liberal Unionist coalition. The question of how Ireland should be governed was, however, merely a question of expediency, on which Tories, Whigs, and Radicals have held different views at different times. It involved no fundamental principle; and though Lord McLaren found himself, as time went on, more and more out of accord with the majority of his old party, the complete loss of sympathy did not come till the closing years of his life, when he was at last finally estranged by the new doctrines which were displacing the liberalism of former days.

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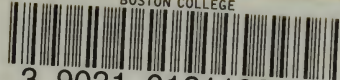
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